ANUL L 2005

S T U D I A

UNIVERSITATIS BABEŞ-BOLYAI

STUDIA EUROPAEA

2-3

EDITORIAL OFFICE: Republicii no. 24, 400015 Cluj-Napoca ♦ Phone 0264-40.53.52

SUMAR – CONTENTS – SOMMAIRE – INHALT

INTERNATIONAL RELATIONS AND POLITICAL SCIENCE

REINHARD MEYERS
Entstaatlichung des Krieges, Reprivatisierung der Gewalt: Der Wandel des Kriegsbildes im Zeitalter post-nationalstaatlicher Konflikte................................5

MICHAEL O'NEILL
Rethinking the EU's constitutional order: From constitutionalism by stealth to a « pouvoir constituant »? 41

MARKO NIKOLIC
Immigration of Serbia and Montenegro Citizens in the European Countries ..79

GEORGIANA CICEO
The merits and limits of socio-constructivism in explaining the process of Eastern enlargement of the European Union 91

LAURA HERȚA GONGOLA
An Interpretation of Romanian-Yugoslav Relations according to Frederich H. Hartmann's Cardinal Principles 107

RUXANDRA IVAN
The Foreign Policy of the Central and Eastern European States: Towards a New Analytical Model..121

ALICE GYEMANT-SELIN
Citoyenneté, identité et migration dans l'UE : une proposition pour l'inclusion démocratique des résidents de longue durée des Etats tiers 141

ZOLTAN BUZAS
Mirror, Mirror on the Wall… Perpetual Peace or War? 173

HISTORY

LUCIAN BUTARU
L'antisémitisme appliqué. Le cas A. C. Cuza...195

LUCIAN POPESCU
On the Origin of the Etruscans 213

EUROPEAN ECONOMY. EUROPEAN INFORMATION SOCIETY

CANER BAKIR
Turkey – en route to meet the challenging Maastricht criteria?........................233

NICOLETA RACOLȚA-PAINA, VERONICA MARIA MATEESCU
Internationalisation et investissement directs et étrangers en Roumanie 239

FELICIA CORNELIA MACARIE
The Effect of the European Integration in the Book Industry 265

EUROPEAN PUBLIC POLICIES. COMMUNITY LAW

LÁSZLÓ KECSKÉS, ZOLTÁN NEMESSÁNYI
Development of subsidiarity principle. From Maastricht via Amsterdam to Rome 277

ANGELO PALETTA
Re-organising Public Service in Europe. An Empirical Study on the Results of Outsourcing 325

LILIANA MIHUȚ
Romanian Social Policy in the EU Accession Process 343

CARMEN LAZĂR
Le recours en annulation des actes de droit communautaire............................361

EUROPEAN CULTURE, EUROPEAN PHILOSOPHY, EUROPEAN ANTHROPOLOGY

ELENI GAVRA
Urban Policies and Architectural Heritage: Concrete Exemples, Real Scenarios and Cities Networks in the Area of SE Europe 379

SAROLTA SIMIGNÉ FENYŐ
Translation as cross-cultural transfer...395

ERIKA KEGYESNÉ SZEKERES
Lexikalische Feminisierungstendenz als sprachkulturelles Phänomen in Europa 415

FORUM

LUCIAN BOGDAN
Nowadays Problems of Somalia. A Brief Overview 447

MIRUNA ANDREEA LEAHU
Models of Think Tanks 455

BOOK REVIEW

SERGIU MIŞCOIU
Paul Magnette, *Europa, statul şi democrația. Suveranul îmblânzit*, Iaşi, Institutul European, 2005, 248 p. (traduction roumaine et préface par Ruxandra Ivan) (Paul Magnette, *L'Europe, l'Etat et la démocratie*, Bruxelles, Editions Complexes, 2000) 469

LAURA HERȚA GONGOLA
Vladimir Tismăneanu, *Stalinism pentru eternitate. O istorie politică a comunismului românesc*, Polirom, 2005, 416 p. (traducere de Cristina Petrescu şi Dragoş Petrescu, postfață de Mircea Mihăieş) (Vladimir

Tismăneanu, *Stalinism for All Seasons. A Political History of Romanian Communism*, Berkeley: University of California Press, 2003)..............................475

MONICA MERUȚIU

Jürgen Habermas, Joseph Ratzinger, *Dialectica secularizării. Despre rațiune şi religie*, Cluj-Napoca, Biblioteca Apostrof, 2005, 120 p. (Romanian translation by Delia Marga, Introduction by Andrei Marga: Jürgen Habermas, Joseph Ratzinger, *Dialektik der Saekularisierung. Uber Vernunft und Religion*, Verlag Herder Freiburg im Breisgau 2. Auflage 2005.) 479

VAL CODRIN TĂUT

Michel Foucault, *Sécurité, territoire, population. Cours au Collège de France 1977-1978*, Seuil/Gallimard, Paris, 2004, 435 p. 483

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

ENTSTAATLICHUNG DES KRIEGES, REPRIVATISIERUNG DER GEWALT: DER WANDEL DES KRIEGSBILDES IM ZEITALTER POST-NATIONALSTAATLICHER KONFLIKTE

Reinhard Meyers*

Abstract

Nicht erst seit der terroristischen Attacke islamischer Fundamentalisten auf New York und Washington am 11. September 2001, sondern schon seit dem Kosovo-Dilemma 1999 (Albrecht u.a.: 2002) sehen sich politische Entscheidungsträger im Westen mit der ernüchternden Einsicht konfrontiert, dass der klassische Krieg zwischen Staaten zwar im Begriff ist, auszusterben (Konfliktbarometer 2002: S.3ff), dass aber gleichwohl die Weltpolitik auch weiterhin gekennzeichnet ist durch den Einsatz organisierter militärischer Gewalt zur Durchsetzung politisch, ökonomisch und ideologisch definierter Interessen. Über beinahe 50 Jahre hinweg hatten mögliche Grosskriege zwischen nuklear bewaffneten, zweitschlagsbefähigten Militärblöcken unser Konflikt-Denken ebenso wie die Militärplanung von NATO und Warschauer Pakt mit Beschlag belegt und für andere, ausserhalb des Ost-West-Gegensatzes sich entwickelnde Konfliktformen desensibilisiert. Blockantagonistische Grosskriege sind nach dem Ende des Kalten Krieges obsolet geworden (Mandelbaum 1998). Was bleibt, ist eine Vielzahl regionaler und lokaler Waffengänge. Nur einer der weltweit 13 Kriege wird 2002 zwischen Staaten ausgetragen; sechs internationalen stehen 34 innerstaatliche gewaltsame Auseinandersetzungen gegenüber (Konfliktbarometer 2002: S.3ff). Mehr noch: drei Viertel aller im letzten Jahrhundert weltweit geführten Kriege waren keine Staaten-, sondern innerstaatliche oder transnationale Kriege: der klassische Staatenkrieg wird

* Professor Reinhard Meyers, Insitute for Political Science, Westfälische Wilhelms-Universität Münster, Germany

zu einem historischen Auslaufmodell. Seit dem Westfälischen Frieden innerhalb ihres Territoriums Inhaber des Monopols legitimer physischer Gewaltsamkeit, und zumindest dem Anspruch nach Alleinvertreter („gatekeeper“) ihrer Bürger und deren gesellschaftlicher Zusammenschlüsse gegenüber der Aussenwelt, müssen sich die Staaten in zunehmendem Masse parastaatlicher, gesellschaftlicher, privater Konkurrenz erwehren. Lokale Warlords, Rebellen- und Guerillagruppen, Befreiungsarmeen, internationale Terrornetzwerke und – last but not least – internationale Söldnerfirmen betätigen sich je länger desto mehr als Kriegsunternehmer, treiben die Entstaatlichung und Privatisierung des Krieges und die Vergesellschaftung organisierter militärischer Gewalt voran.

Ein Blick zurück in die (eurozentrische) Geschichte der Neuzeit macht allerdings deutlich, dass unter dem Phänomen des Krieges klassischerweise der Krieg *zwischen Staaten bzw. ihren regulären Streitkräften* verstanden wird - im Sinne des Generals v. Clausewitz die Fortsetzung des diplomatischen Verkehrs unter Einmischung anderer Mittel, geführt um der Durchsetzung *staatlicher* Territorial- oder Machtansprüche willen, gestützt durch eine Produzenten und Produktivkräfte mobilisierende, allumfassende Kriegswirtschaft. *Ex negatione* ist der Friede klassischerweise ein völkerrechtlich garantierter Zustand des Nicht-Krieges *zwischen Staaten*. Das Gewaltverbot des Art. 2(4) der UNO-Charta ist eine Fundamentalnorm des Völker- (oder präziser: des zwischen*staatlichen*) Rechts. Dieser Staatenzentrismus hat bis in die Gegenwart das Bild des Krieges – wie auch des Friedens - in Politik, Streitkräften und Öffentlichkeit geprägt und auch die Wissenschaft weitgehend in seinen Bann geschlagen. Allerdings: er verdeckt, dass der Krieg zwischen Staaten weltgeschichtlich gesehen „...nur in einer vergleichsweise kurzen historischen Phase und in einem beschränkten geographischen Raum die vorherrschende Kriegsform war...“(Hoch 2001: 17).

Seit der Auflösung der Kolonialreiche in den fünfziger und sechziger Jahren des 20.Jahrhunderts tritt mehr und mehr an die

Stelle des klassischen zwischenstaatlichen Krieges als zeitlich begrenzter Eruption organisierter Gewalt, nach Clausewitz gipfelnd in der Entscheidungsschlacht zur Niederringung des Gegners, der langdauernde Bürgerkrieg in der Form des *low intensity conflict* oder *low intensity warfare*. Aus einem Instrument der Durchsetzung *staatlichen* politischen Willens, der Realisierung *staatlicher* politischer, territorialer, ökonomischer, weltanschaulicher Interessen wird der Krieg zu einer Form *privat*wirtschaftlicher Einkommensaneignung und Vermögensakkumulation, zu einem Mittel klientelistischer Herrschaftssicherung und semi-privater Besetzung und Behauptung von nur unter den besonderen Bedingungen einer spezifischen Kriegsökonomie überlebensfähigen Territorien, Enklaven, Korridoren, Kontrollpunkten. In einer Gemengelage von privaten Bereicherungs- und persönlichen Machtbestrebungen, Interventionen Dritter zur Verteidigung bestimmter Werte, aber auch zur Durchsetzung je eigener Herrschafts- und Ausbeutungsinteressen, der gegenseitigen Durchdringung und Vermischung kriegerischer Gewalt und organisiertem Verbrechen verliert der klassische Staatenkrieg seine überkommenen Konturen (Münkler 2002a: Kap.10). Partisanen- und Guerillaaktionen, Selbstmordattentate, terroristische Gewaltexzesse unterlaufen die Trennung von Schlachtfeld und Hinterland, von zivilen und militärischen Zielen. Die Ausbildung eines „Lumpenmilitariats" (*„tagsüber Soldaten, in der Nacht Gangster"* – Ayissi 2003) durchdringt die Trennlinie zwischen Kombattanten und Nichtkombattanten. Das Nacheinander bewaffneter Kämpfe, fragiler Kompromisse und Waffenstillstände, und erneuter bewaffneter Auseinandersetzungen hebt die zeitliche Unterscheidung von Krieg und Nicht-Krieg auf (Ehrke 2002). Das genuin Neue an dieser Welt reprivatisierter Gewaltanwendung ist allerdings nicht so sehr das Aufeinandertreffen staatlicher und nichtstaatlicher, gesellschaftlicher Gewaltakteure im selben Raum- und Zeithorizont. Sondern die Fähigkeit *lokal* agierender Rebellen, Condottiere, Warlords, Kriegsunternehmer, ihr Handeln durch effiziente Nutzung

globalisierter Relationen und Prozesse zu optimieren und entweder Formhülsen der Staatsgewalt wie moderne Freibeuter zu kapern oder staatsfreie Räume einzurichten und zu behaupten, die einer informellen Ökonomie und der organisierten Kriminalität den zur Finanzierung des Krieges notwendigen Freiraum verschaffen (Stroux 2003). In Abwandlung jenes berühmten Zitats des Generals von Clausewitz: der Krieg ist nicht länger mehr die Fortsetzung des politischen Verkehrs, sondern die Fortsetzung des Beutemachens unter Einmischung anderer Mittel!

Vor diesem Hintergrund stellt sich die Frage nach dem Umgang mit militärischer Gewalt wie der Bearbeitung kriegerischer Konflikte im internationalen System neu. Im Spannungsbogen der klassischen zwischenstaatlichen und der post-nationalstaatlichen, „Neuen" Kriege (Kaldor 2000; Kaldor/Vashee 1997) entwickelt sich – vor der Kulisse einer auf immer modernere, präzisere und schnellere konventionelle Militärtechnologien rekurrierenden *Revolution in Military Affairs* (Müller/Schörnig 2001) - der hochtechnisierte, computergestützte, gleichsam auf virtuelle Schlachtfelder ausgreifende postmoderne *Cyberwar* (Gray 1997; Freedman 1998) einerseits, der weitgehend in prämodernen Formen verharrende oder zu ihnen zurückkehrende *Kleine Krieg* andererseits (Daase 1999; Hoch 2001). Das klassische Milieu *zwischenstaatlicher* Politik – der nullsummenspielartige anarchische Naturzustand – wird zumindest in schwachen und zerfallenden Staaten gespiegelt durch einen *innerstaatlichen* oder besser: *innergesellschaftlichen* Naturzustand, dessen Akteure in zunehmendem Masse substaatliche und transnational organisierte gesellschaftliche Gruppen sind. Dies hat vor allem Konsequenzen für die Ziele, Motive und das Handlungsumfeld der Konfliktakteure. So wie sich mit fortschreitender Globalisierung, mit der Kommerzialisierung und Übernahme vormals staatlicher Handlungsfelder durch Transnationale Unternehmen und nichtgouvernementale Organisationen die Weltpolitik zunehmend entstaatlicht und privatisiert (Brühl u.a. 2001; Czempiel 2002), so entmonopolisiert,

dereguliert, privatisiert sich auch die Anwendung militärischer Gewalt. Damit aber wird der Prozess der rechtlichen Einhegung und Verstaatlichung des Krieges, der die Geschichte Europas von der Frühen Neuzeit bis zum Zweiten Weltkrieg (Übersicht: Wolfrum 2003) gekennzeichnet hat, wenigstens teilweise rückgängig gemacht.

Wir wollen im folgenden eher thesenartig einige Überlegungen formulieren, die die Frage nach den Randbedingungen von Krieg, Frieden und Sicherheit auf einen weiteren Rahmen rückbeziehen. Dabei ist es zweifelsohne zu einfach, die Konflikte der Gegenwart zu deuten als blosse Reaktion auf das Ende jener Systemauseinandersetzung zwischen den beiden nuklearen Supermächten, die im Interesse weltpolitischer Eskalationsdominanz latent oder offen vorhandene Konflikte regionaler oder lokaler Akteure gedämpft, gedeckelt, am Austrag gehindert, jedenfalls aber nicht deeskalierend bearbeitet, geschweige denn gelöst haben. Die „Entdeckelung" historisch tief verwurzelter Perzeptions- und Interessen-Antagonismen als Folge der Implosion der östlichen Block-Vormacht ist jedoch nur einer der möglichen Erklärungs-Bausteine weltweiten Konfliktverhaltens. Einen weiteren liefert eine sich an der klassischen Politik-Definition Harold Lasswells (1936) [*Politics: Who Gets What, When, and How*] orientierende, die Akteure des Neuen Krieges in den Blick nehmende Interessenanalyse: Zu identifizieren wären insbesondere jene Führungsschichten, ehemaligen Nomenklatura-Eliten und Ethnokraten (Wolkow 1991), die ökonomische, historische, kulturelle und religiöse Gegebenheiten und Differenzen ebenso wie die Notwendigkeiten der Formulierung, Durchsetzung, Behauptung und des Managements neuer kollektiver Identitäten dazu nutzen, in Situationen des Umbruchs und des Übergangs bestimmte Bevölkerungsteile zu konfliktfähigen Gruppen zusammenzufügen, um unter dem Deckmantel der Verteidigung überkommener Werte, des Schutzes ethnopolitisch begründeter Gebiets- und Herrschaftsansprüche oder der Verteidigung weltanschaulicher Positionen im wesentlichen ihre ureigenen Interessen zu befördern (gute Problemeinführung Wiberg/Scherrer

1999; Beispiel Keen 2003). Einen dritten Erklärungs-Baustein schliesslich liefert die Beobachtung, dass nahezu alle (zwischenstaatlichen wie innergesellschaftlichen) Kriege, die in den letzten beiden Jahrzehnten unsere Aufmerksamkeit mit Beschlag belegt haben, sich an den Rändern und Bruchstellen jener Imperien entwickelten, die bis zum Ersten Weltkrieg die Welt beherrscht und unter sich aufgeteilt hatten (Münkler 2002b: 13ff). In den Zerfallsgebieten der großen Reiche, an der Peripherie der Ersten und der Zweiten Welt, nistet sich der Kleine Krieg (Daase 1999), der Krieg der Partisanen, Rebellen und Milizen seit Jahrzehnten ein, bewirkt eine umfassende Autoritätskrise staatlicher Institutionen und läßt – in Verbindung mit der Machtarroganz von Herrschaftscliquen und dem prädatorischen Griff der militärisch-bürokratischen Staatsklassen nach öffentlichen Einkünften jeglicher Art – Staatsbildungsprozesse scheitern oder versanden. Die Neuen Kriege sind typischerweise Staatenzerfallskriege; sie lassen Gewaltmärkte entstehen, auf denen rechtsförmige Beziehungen und Verfahren nicht gelten, sondern Waffen, wertvolle agrarische Anbauerzeugnisse, mineralische Rohstoffe, „Blutdiamanten", Zwangsabgaben und Schutzgelder als Währungen jenseits des Gesetzes dienen (Debiel 2002b). Um die Bedeutung dieser Entwicklungen besser einschätzen zu können, ist es notwendig, das überkommene staatenzentrische Kriegsbild knapp zu skizzieren.

Der Krieg zwischen Staaten: Normalfall des naturzuständlichen internationalen Systems?

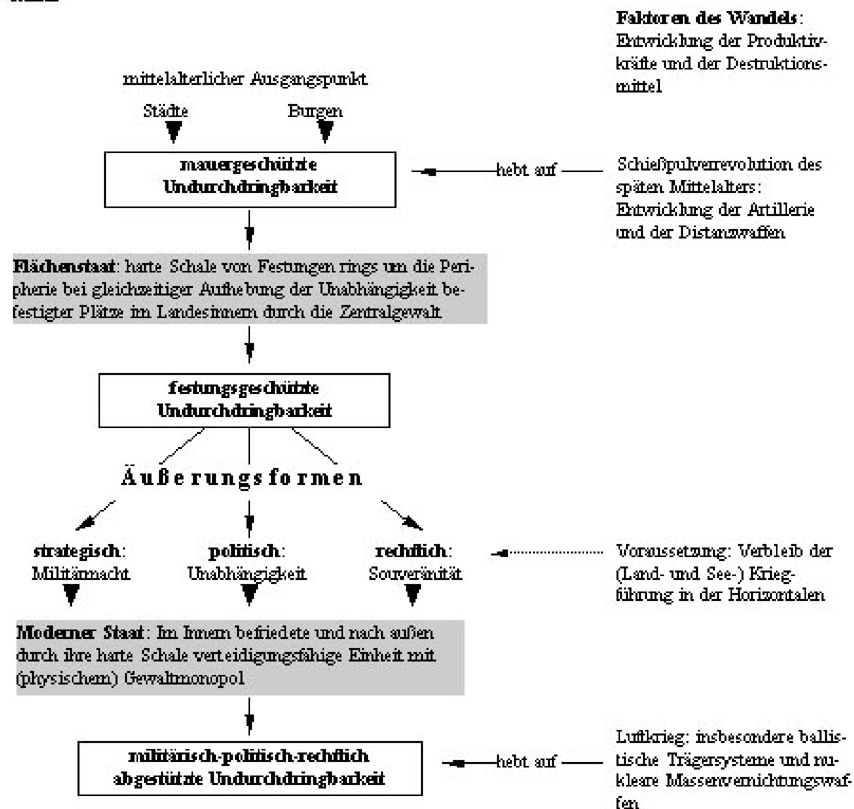
Eckpunkte der Diskussion – Daß Krieg und Frieden begrifflich als zwei klar voneinander unterscheidbare, sich gegenseitig ausschließende politische Zustände gelten, ist Ergebnis einer spezifisch frühneuzeitlichen Argumentation: Angesichts der Situation des konfessionellen Bürgerkrieges in Europa konstituiert vor allem Thomas Hobbes den Staat als einen öffentliche Ruhe und innere (Rechts-)Sicherheit garantierenden unbedingten Friedensverband,

der auf gesellschaftsvertraglicher Grundlage den Naturzustand des *bellum omnium contra omnes* durch Setzung eines rechtlich geordnete Machtverhältnisse im Staatsinnern schützenden Gewaltmonopols aufhebt (Näheres Meyers 1997: 358ff). Gedanklich wird damit der Weg frei, den Krieg auf das Binnenverhältnis der Souveräne, den internationalen Naturzustand, zu beschränken und ihn als rechtlich geregelte Form bewaffneter Konfliktaustragung zwischen Staaten zu begreifen. Zugleich ermöglicht diese Operation die Definition des Friedens als Nicht-Krieg – und liefert damit eine politisch-juristische Konstruktion, mittels derer die Vielfalt sozialer und politischer Konfliktlagen begrifflich eineindeutig bestimmbar scheint.

Allerdings weist die ideengeschichtliche Analyse auf, dass die so gewonnenen Begriffe von Krieg und Frieden mit der Ontologie des klassischen staatenzentrischen Systems internationaler Politik aufs engste verknüpft sind. Veränderungen der realhistorischen Randbedingungen internationaler Politik ziehen Veränderungen im Gebrauch wie im Gehalt der Begriffe von Krieg und Frieden unmittelbar nach sich. Seit der frühen Neuzeit setzt sich in der europäischen Geschichte der Staat als Schutzverband und territorial faßbarer internationaler Akteur vornehmlich deshalb durch, weil er seine Tätigkeit über die erfolgreiche Produktion von Sicherheit legitimiert: von Verkehrswege- und Rechts-, später dann auch wirtschaftlicher und sozialer Sicherheit im Binnenverhältnis, von nationaler Sicherheit im Außenverhältnis zu anderen vergleichbaren Akteuren, von internationaler Sicherheit in der durch die Prozesse von Konkurrenz und Konflikt ebenso wie von Kooperation und Friedensbewahrung strukturierten Staatengesellschaft. In dieser Entwicklung erscheinen Sicherheit und Territorialität als notwendige Korrelate: je mehr sich der frühneuzeitliche Staat territorial verfestigt, seine Herrschaft im Binnenverhältnis unwidersprochen durchsetzen und behaupten kann, desto erfolgreicher vermag er sein Schutzversprechen seinen Bürgern gegenüber im Inneren wie auch in der sich herausbildenden Staatenwelt nach außen einzulösen. Und: begriffsgeschichtliches Ergebnis des sich ausbildenden und

intensivierenden Konnexes zwischen staatlicher Herrschaft - Ausübung von Macht durch zentrale politische Institutionen - und Kriegführung war, daß Frieden und Sicherheit über Jahrhunderte hinweg in politisch-militärischen Kategorien bestimmt, vom Staat als ihrem Produzenten und Garanten her gedacht wurden, daß sie sich auf den Schutz des Individuums ebenso wie auf den Schutz der schützenden Institution bezogen. Schließlich: Sicherheit und Schutzgewährung als Voraussetzung einer erfolgreichen Politik der Herstellung und Bewahrung von Frieden kristallisieren sich in der Verteidigung der Integrität des staatlichen Territoriums ebenso wie in der Behauptung der Freiheit der politisch-gesellschaftlichen Eigenentwicklung. Wir fassen diese Entwicklungen in einer schematischen Übersicht:

Abb. 1 Der neuzeitliche Territorialstaat - Substrat des realistischen Billard-Ball-Modells der internationalen Politik



Von zentraler Bedeutung in diesem Kontext ist die Annahme, dass zum einen die Entwicklung des Kriegsbildes und der Kriegsformen Resultat der Entwicklung der Produktivkräfte und der Destruktionsmittel ist, zum anderen aber auch die Existenz, physisch- territoriale Gestalt, politische Struktur und politisch-gesellschaftliche Funktion des Staates mit der Ausdifferenzierung und dem Wandel der Ziele, Formen und Prozesse der Kriegführung aufs engste verknüpft sind (hierzu als Übersichten van Crefeld 1991; McNeill 1984; Porter 1994; Parker 1995; Townshend 1997). Dabei

stellt schon der die Entwicklung der *Destruktionsmittel* antreibende technische Fortschritt das klassische Symbol der erfolgreichen Umsetzung staatlicher Schutzversprechen – nämlich die militärisch-politisch-rechtlich abgestützte Undurchdringbarkeit staatlicher Grenzen für Außeneinflüsse (Herz 1974) – sukzessive in Frage und hebt sie schliesslich auf. Die insbesondere durch die Entwicklung der Luftkriegführung und der ballistischen Trägerwaffen im 20.Jahrhundert bewirkte prinzipielle Durchdringbarkeit der harten Schale des nationalen Akteurs wird intensiviert durch die moderne industriewirtschaftliche Entwicklung und die Folgen einer immer weiter voranschreitenden internationalen Arbeitsteilung (Übersicht Dicken 1998), in deren Konsequenz der nationale Akteur unter Globalisierungsdruck gerät (Übersichten bei Held/McGrew/Goldblatt/Perraton 1999; Held/McGrew 2000). Die Ressourcen, deren er auch weiterhin nicht nur zur Produktion von Sicherheit, sondern mehr noch angesichts seiner Wandlung vom liberalen Nachtwächterstaat der ersten Hälfte des 19. zum Daseinsvorsorgestaat der zweiten Hälfte des 20. Jahrhunderts zur Erfüllung seiner sozialen Staatsaufgaben bedarf, werden bedroht, geschmälert, in Frage gestellt. Die Entgrenzung der Staatengesellschaft als Folge von Prozessen der Verregelung, Institutionalisierung und formalen Organisation internationaler Beziehungen, der Ausbildung transnationaler Interessenkoalitionen in einer Situation des Regierens ohne Staat (Zürn 1998), der Entwicklung inter- und transgouvernementaler Politikverflechtungen und von Mehrebenensystemen des Regierens in staatenüberwölbenden (Integrations-) Zusammenhängen (Wallace/Wallace 2000) überdeckeln, unterlaufen oder ignorieren seine überkommenen Handlungsspielräume (Meyers 1999). Der Informalisierung des internationalen Systems korrespondiert die Informalisierung der innerstaatlichen Politik – fallen doch nicht nur die räumlichen und zeitlichen Reichweiten ökonomischer Prozesse und (formeller) politischer Entscheidungen auseinander, sondern gehen auch im Zuge von Globalisierung, Deregulierung und

Privatisierung öffentlicher Aufgaben Teilbereiche staatlicher Souveränität an private ökonomische Akteure über (Altvater/Mahnkopf 2002: Kap.12). Die so vergrößerte Antinomie von ökonomischem Sachzwang und überkommener politischer Legitimität verlangt zu ihrer Lösung nach politisch-ökonomischen Foren, nach informellen Gremien, in deren Schoß Entscheidungen getroffen werden, für die der Nationalstaat vermeintlich zu klein ist, die aber trotz aller Deregulierung für das Funktionieren einer globalisierten Weltwirtschaft unabdingbar sind. Die demokratische Legitimität solcher Entscheidungen ist zumindest frag-würdig – umgesetzt werden müssen sie bei Strafe von Positionsverlusten im Standortwettbewerb, vor der Drohkulisse von Kapitalflucht und Arbeitsplatzabbau gleichwohl. Damit aber wird die Leistungsfähigkeit des Staates als Garant von Daseinsvorsorge wie als Ordnungsmacht gesellschaftlichen Zusammenlebens im binnen- wie im zwischenstaatlichen Handlungsbereich weiter ausgehöhlt. Wir kommen auf diesen Aspekt noch einmal zurück.

Der Krieg zwischen Staaten und Privaten: Normalfall der globalisierten Gesellschaftswelt?

Die eben formulierte Einsicht ist – ebenso wie die wissenschaftliche Beschäftigung mit den Neuen Kriegen – Resultat der Auseinandersetzung mit einem umgreifenderen Kontext: dem der Globalisierung. Verstanden als Zunahme und Verdichtung der den ganzen Erdball umspannenden wechselseitigen Verflechtungen politischer, wirtschaftlicher, militärischer und kultureller Art, gestützt auf revolutionäre Fortschritte der Informations- und Kommunikationstechnologie wie der Datenverarbeitung, die gleichsam die Zeit über den Raum siegen lassen, bewirkt sie nicht nur das Zerbröckeln der letzten Bastionen territorialer Autonomie. Ihr immer dichter geknüpftes Netz umhüllt den einzelstaatlichen Akteur wie weiland die Fesseln der Liliputaner den gestrandeten Gulliver. Zusehends untergräbt und überlagert sie das staatliche Gewaltmonopol: Von „oben“ durch die bereits mit den Weltkriegen

einsetzende, in Verteidigungsbündnissen, Blöcken, Internationalisierung der Rüstungsindustrie wie des Waffenhandels, aber auch Rüstungskontrolle und Verabredung vertrauensbildender Massnahmen greifbare Transnationalisierung des Militärs, die die Fähigkeit von Staaten, einseitig mit Gewalt gegen andere vorzugehen, erheblich einschränkt. Von „unten“ durch die Privatisierung der Gewaltanwendung, wie sie die Kleinen oder Neuen Kriege, die Bürgerkriege und *low intensity conflicts* kennzeichnet: Produkte möglicherweise einer Trotz- oder Gegenreaktion, die vor dem Hintergrund der Gleichzeitigkeit von Integration und Fragmentierung, Nivellierung kultureller Unterschiede wie Schärfung des eigenen Profils, weltweiter Verflechtung wie Lokalisierung von Beziehungen dem macdonaldisierten politischen wie sozioökonomischen Einheitsbrei der Globalisierung, der kosmopolitischen Inklusion, dem Universalismus von Liberalität und Menschenrechten, der multikulturalistischen Verschleifung ethnokultureller Differenzen durch eine Politik des gewaltgestützten Identitätenpartikularismus zu entrinnen streben (Kaldor 2000: 14ff).

An dieser Stelle ist für unsere Argumentation zunächst die Feststellung entscheidend, dass der noch von Max Weber als unhinterfragter alleiniger Inhaber des Monopols legitimer physischer Gewaltanwendung in einem angebbaren Territorium beschriebene nationale Akteur in weiten Teilen der Welt bereits zugunsten anderer Gewaltakteure abgedankt hat. In Angola, Somalia, Sierra Leone, Liberia oder dem Kongo ist er den Parteien, Handlangern und Profiteuren des Neuen Krieges, den kleptokratischen Eliten, den Patronen neo-patrimonialer Herrschaftsstrukturen und politischer Netzwerke, den Diamantensuchern und den jeglicher sozialen Bindung entfremdeten Jugendbanden (Keen 2003; Reno 2003) längst zum Opfer gefallen. In Teilen des Balkans und des ehemaligen Sowjetimperiums ist immerhin noch seine Hülle begehrt, weil diese wie ein Theatermantel mafiösen Unternehmungen einen Rest von Legitimität und Respekt zu verschaffen scheint, wenn nicht gar ihre

Durchführung mit Blick auf Usurpation und Kontrolle staatlicher Rest-Machtmittel entschieden erleichtert. In beiden Fällen aber wird die klassische neuzeitliche Legitimationsgrundlage staatlicher Existenz und staatlichen Handelns (zur Ableitung Meyers 1997: 348 – 371) *insgesamt* deutlich in Frage gestellt: Nämlich die, den von Hobbes postulierten vorgesellschaftlichen Naturzustand des *bellum omnium contra omnes* durch Garantie von Sicherheit und Rechtsfrieden im Binnen- wie Schutz vor militärischen Angriffen im Aussenverhältnis zu überwinden. Die herkömmliche Legitimation des Krieges als Ausdruck des Rechtes der Staaten auf Inanspruchnahme des Instituts der Selbsthilfe zur Verteidigung eigener Interessen in einer anarchischen Staatenwelt ruht eben auf der Erfüllung dieses Schutzversprechens: seiner Durchsetzung dienen Monopolisierung der Gewaltanwendung und Verstaatlichung des Krieges. Erst als sich der Staat „...als Kriegsmonopolist durchgesetzt hatte, konnten Kombattanten und Nichtkombattanten, vor allem aber Erwerbsleben und Kriegführung, voneinander getrennt werden. Weil der Staat seine Soldaten nicht mit Plünderung und Beute, sondern aus Steuern finanzierte, konnte er eine ‚Zivilisierung der Krieger' betreiben, die in deren Kasernierung, einer auf regelmäßigem Exerzieren beruhenden Disziplin und der Ausbildung einer militärischen Berufsethik ihren Niederschlag fand ...“ (Münkler 2001).

Dass die Entwicklung der Destruktionsmittel (Übersicht McNeill 1983) dieses Schutzversprechen schon zu Beginn des 20. Jahrhunderts vermittels des Luftkrieges ernsthaft hinterfragt, und in der Mitte des 20. Jahrhunderts durch die Entwicklung nuklearer Massenvernichtungswaffen potentiell aufgehoben hat, haben wir bereits ansatzweise erwähnt. Andererseits liesse sich aber auch die Entwicklungsgeschichte von Abschreckungsdoktrin und Nuklearstrategie (Übersicht Freedman 1989) als Versuch interpretieren, die Schutzfunktion des Staates durch Rekurs auf die letztmögliche, auf die in der Tat *ultima ratio* einer Drohung mit Mord und Selbstmord im atomaren Höllenfeuer erneut zu befestigen. Erst

die Entwicklung des Neuen Krieges setzt solchem Denken tatsächlich ein Ende. Die charakteristischen Elemente jener Schönen Neuen Welt der privatisierten Gewalt (Mair 2003) – nämlich

- die Verwicklung der Staaten in unkonventionelle Prozesse und Formen der Kriegführung zwischen staatlichen und sub- oder nichtstaatlichen Akteuren,
- die Vergesellschaftung des Gewaltmonopols,
- die Aufhebung der Unterscheidung zwischen Armee und Zivilbevölkerung, die Zivilisten übergangslos zu Kombattanten werden, Wohnviertel und Schlachtfeld in eins fallen lässt,
- die die Brutalität der eingesetzten Mittel steigernde quantitative wie qualitative, zeitliche wie räumliche Entgrenzung eines Konflikts zwischen sich gegenseitig als illegitim bezeichnenden Einheiten,
- schliesslich die Abwanderung all dieser Auseinandersetzungen aus der Zuständigkeit des Völker- oder besser: zwischen*staatlichen* Rechts in die normative Grauzone zwischen *inner*staatlichem und *zwischen*staatlichem Recht

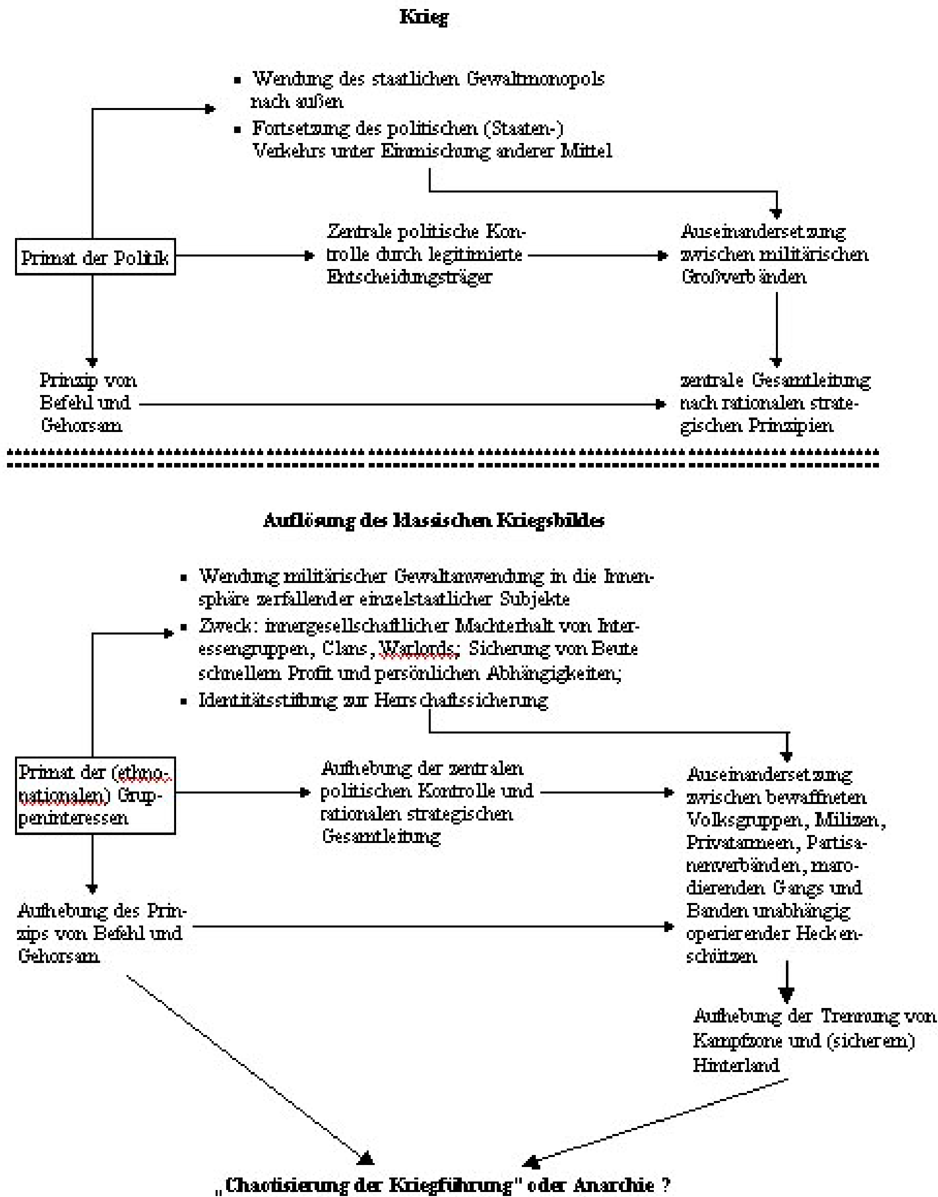
beschwören letztlich die Auflösung des überkommenen staatenzentrischen Kriegsbildes (vgl.Abb.2). Militärische Gewaltanwendung wendet sich aus dem zwischenstaatlichen Bereich in den innergesellschaftlichen, aus der Sphäre *zwischen* den handelnden Subjekten der *internationalen* Politik in die *innergesellschaftliche* Sphäre sich zersetzender und zerfallender staatlicher Handlungseinheiten. Mit diesen Veränderungen in Kriegsbild und Kriegführung aber ist militärische Gewaltanwendung heute von einem überwiegend *zwischenstaatlichen* zu einem überwiegend *innergesellschaftlichen* Problem geworden ! Und: der Neue Krieg ist mit den herkömmlichen Kategorien der Sicherheitspolitik nicht zu erfassen: der Versuch, es doch zu tun, endet in der Sackgasse der Fehlperzeptionen („ethnonationaler fundamentalistischer Konflikt“) (Ellis 2003:35ff) oder des schlichten

Unverständnisses („Anarchie“)[1]. Wir brauchen ein neues begriffliches Instrumentarium, das uns weiterhelfen kann, die genannten Phänomene zu klassifizieren, historisch zu verorten und zumindest einer Erklärung zugänglich zu machen.

---

[1] Am Beispiel der Ereignisse in Jugoslawien und in Ruanda hat John Mueller (2001:97) vor kurzem einleuchtend aufgezeigt, dass das Konzept des ethnonationalistischen Bürgerkrieges in seiner Gesamtheit in die Irre führt: „Specifically, insofar as it is taken to imply a war of all against all and neighbor against neighbor – a condition in which pretty much everyone in one ethnic group becomes the ardent, dedicated, and murderous enemy of everyone in another group – ethnic war essentially does not exist. I argue instead that ethnic warfare more closely resembles nonethnic warfare, because it is waged by small groups of combatants, groups that purport to fight and kill in the name of some larger entity. Often, in fact, ‚ethnic war‘ is substantially a condition in which a mass of essentially mild, ordinary people can unwillingly and in considerable bewilderment come under vicious and arbitrary control of small groups of armed thugs ... bands of opportunistic marauders recruited by political leaders and operating under their general guidance...“. Ellis (2003:35) verweist in diesem Kontext auf ein weiteres Charakteristikum der Diskussion: „Attribution of the ethnic label is often used both as a description and an explanation simultaneously, as a substitute for more thorough analysis. A cynical observer may think that whenever a politician or diplomat describes a war as ‘ethnic’ or ‘rooted in ancient hatreds’, it is usually a coded way of signalling an unwillingness to intervene in the situation to any serious extent since it implies that a clash is inevitable.”

Abb.2 Die Auflösung des klassischen Kriegsbildes



Zurück ins Mittelalter ? Charakteristika der Neuen Kriege

Mit der Infragestellung des unitarischen nationalen Akteurs als klassischer Kriegführungsmacht – schlimmstenfalls mit seiner Degeneration zum schwachen oder gar gescheiterten Staat (Albrecht u.a. 2002; Didier/Marret 2001) - wird auch der zwischen*staatliche* Krieg als alleinige oder hauptsächliche Austragungsform internationaler Konflikte zum Anachronismus. An die Stelle organisierter zwischenstaatlicher Gewaltanwendung tritt ein *neuer Kriegstyp*, in dem sich Momente des klassischen Krieges, des Guerillakrieges, des bandenmäßig organisierten Verbrechens, des transnationalen Terrorismus und der weitreichenden Verletzung der Menschenrechte miteinander verbinden. Seine *asymmetrische Struktur* zwischen regulären und irregulären Kampfeinheiten impliziert seine sowohl zeitliche als auch räumliche *Entgrenzung*: die Heckenschützen Sarajevos kämpften weder entlang einer zentralen Frontlinie noch innerhalb eines durch Kriegserklärung formal begonnenen und durch Kapitulation oder Friedensvertrag formal geschlossenen Zeitraums. Sie sind aber ein gutes Beispiel für ein weiteres Kennzeichen Neuer Kriege: der sukzessiven Verselbständigung und *Autonomisierung* ehedem militärisch eingebundener Gewaltformen wie Gewaltakteure (Münkler 2002b). Die regulären Armeen verlieren die Kontrolle über das Kriegsgeschehen – sowohl räumlich als auch zeitlich. Während nach Clausewitz im herkömmlichen Krieg zwischen Staaten die Niederwerfung des Gegners in der nach Konzentration der Kräfte angestrebten Entscheidungsschlacht das oberste Ziel der Kriegsparteien ist, besteht die Besonderheit des Neuen Krieges in einer Strategie des sich lang hinziehenden Konflikts, in dem der Gegner vorgeführt, ermüdet, moralisch und physisch zermürbt, durch punktuelle Aktionen räumlich gebunden, schliesslich durch Schnelligkeit und Bewegung ausmanövriert und durch geschickte, gelegentlich durchaus auch eigene Opfer kostende Aktionen in den Augen einer internationalen Öffentlichkeit diskreditiert, moralisch erniedrigt und so bei möglichen Waffenstillstands- oder

Friedensverhandlungen unter Vermittlung mächtigerer Dritter ins Unrecht gesetzt und zumindest teilweise um die Früchte seiner Anstrengungen gebracht wird.

Eine solche Veränderung der Kriegsziele zieht notwendigerweise auch eine Veränderung in der Art der Kriegführung nach sich: die großen, statischen Abnutzungsschlachten regulärer Armeen aus der Zeit des Ersten, die schnelle, raumgreifende Bewegung gepanzerter Verbände aus der Zeit des Zweiten Weltkriegs weichen Konfrontationen zwischen kleinen, regulären und/oder irregulären Verbänden, in den klare Fronten ebenso selten sind wie große Entscheidungsschlachten. Was zählt, ist nicht der militärische Sieg über den Gegner, sondern die Kontrolle über seine Auslandsverbindungen, seine Transportwege, seine Rohstoffvorkommen, über die Moral und Informationslage seiner Zivilbevölkerung. Das bevorzugte Mittel der Auseinandersetzung sind Kleinwaffen, automatische Gewehre, Granatwerfer: die effektivsten Kampfmaschinen des Kalaschnikow-Zeitalters (Kongo, Liberia) sind bekiffte, zugedröhnte männliche Jugendliche, die mit einem AK-47 Sturmgewehr ausgestattet werden und außerhalb ihrer als Miliz firmierenden Räuberbande weder die Mittel zum Lebensunterhalt noch gesellschaftliche Anerkennung oder Respekt für ihr Tun erwarten können.

Insofern ginge man auch zu kurz, den Neuen Krieg als einen „blossen" ethnonationalistischen Bürgerkrieg zu begreifen, in dem die Gewaltanwendung zur Durchsetzung von Volksgruppen-Zielen gleichsam privatisiert wird Er ist ein genuin politisches Phänomen, an dem externe und interne, regierungsamtliche wie nichtregierungsamtliche Akteure gleicherweise teilhaben. In ihm geht es weniger um klassische machtpolitische und/oder territoriale Ziele, wie sie etwa die „Kanonenbootpolitik" des 19. Jahrhunderts kennzeichneten, sondern um (auch bewaffneten Zwang als Mittel der Überzeugung oder Verdrängung Andersdenkender einsetzende) *Identitätsstiftung*. In Abwandlung des klassischen Diktums von Carl Schmitt – dass nämlich souverän sei, wer über den

Ausnahmezustand bestimme – ist der eigentliche Souverän des Neuen Krieges derjenige, der Konflikte der *Perzeption* des Anderen durch die eigenen Kampfgenossen, der *Interpretation* historischer und politischer Tatsachen auf der innergesellschaftlichen wie internationalen Referenzebene und der *Sinnstiftung* auf der Ebene der Weltanschauung, der Religion oder der Ideologie zu *seinen* Gunsten entscheiden kann.

Vom Totalitätsanspruch der Sinnstiftung ist es in aller Regel nur ein kleiner Schritt zum Totalitätsanspruch der Kriegführung. Die Bezeichnung der Neuen Kriege als *Kleine Kriege* ist ein gutes Stück euphemistischen Orwell'schen *New Speak*: weder in Dauer, Intensität noch Zerstörungskraft sind die *Kleinen Kriege* tatsächlich klein – unter den vom Stockholm International Peace Research Institute im Jahrbuch 2001 für 2000 genannten 23 grösseren Bürgerkriegen waren nur vier (Algerien, Burundi, Kongo, Ruanda) weniger als neun Jahre alt. Was sie prinzipiell kennzeichnet, ist ihre Durchbrechung, wenn nicht gar Ausserkraftsetzung verbindlicher Regeln für die Kriegführung: die Kriegsakteure bestreiten die Geltung des Kriegs*völker*rechts, weil es sich um ein zwischen*staatliches* Rechtssystem handelt, sie sich aber gerade nicht als *staatliche* Akteure begreifen, die den das *ius in bello* kodifizierenden und einhegenden Konventionen unterworfen sind. Am augenfälligsten wird diese Entwicklung in der Aufhebung der Unterscheidung zwischen Kombattanten und Nichtkombattanten: im *Kleinen Krieg* kommen paradoxerweise *alle* Mittel zum Einsatz, so dass er in seiner charakteristischen Brutalität Züge annimmt, die sonst nur mit dem Phänomen des totalen Kriegs in Zusammenhang gebracht werden. „Die Gesamtheit des Gegners, und nicht nur dessen Kombattanten, wird als Feind angesehen und bekämpft. Die Symmetrie, also die Beschränkung des Kampfes auf die Kombattanten, kennzeichnet den großen Krieg; für den kleinen Krieg hingegen ist die bewusst angestrebte Asymmetrie im Kampf gegen die verwundbarste Stelle des Gegners, eben die Nichtkombattanten, charakteristisch. Daher rührt der hohe Anteil von Zivilisten unter den Opfern kleiner Kriege.

Auch reguläre Streitkräfte, die in einem kleinen Krieg gegen irreguläre Kräfte eingesetzt werden, tendieren dazu, sich die regellose Kampfesweise des Gegners zu eigen zu machen...“(Hoch 201:19).

Diese Entwicklungen unterfüttern die Infragestellung der überkommenen Ordnungs- funktionen des Staates, wie sie weiter oben mit Blick auf weltmarktinduzierte Veränderungen der Industriegesellschaften, Globalisierungsdruck und Bildung transnationaler Interessenkoalitionen bereits knapp skizziert worden sind. Das Ignorieren des inneren wie äußeren Gewaltmonopols durch „low-intensity conflicts“ (van Crefeld 1999: Kap.6), insbesondere der gewaltträchtige Fragmentierungs- und Zerfallsprozess klassischer nationaler Akteure in Klein- und Mikrostaaten, die Auflösung staatlicher Handlungssubjekte und -Strukturen (Somalia!), damit aber auch die Aufhebung des traditionell nach innen wie nach außen wirksamen Schutzversprechens, das seit Hobbes Existenz, Tätigkeit und Gewaltausübung des Staates gegenüber seinen Bürgern überhaupt erst legitimiert - all diese Phänomene der Gegenwart unterlaufen die trennscharfe Differenzierung der Begriffe von Krieg und Frieden ebenso eklatant wie der abschreckungsgestützte Blockantagonismus von Ost und West sie überwölbt hatte. Zumindest *prima facie* ist die treibende Kraft dieser Entwicklungen die quantitativ starke Zunahme nichtstaatlicher Akteure in den internationalen (Gewalt-)Beziehungen – Befreiungsbewegungen und Guerillaorganisationen (Davis/Pereira 2003), terroristische Gruppierungen (Geyer 2003) und fundamentalistische Vereinigungen, Verbünde der organisierten Kriminalität, privatwirtschaftlich organisierte Söldnerunternehmen und private Sicherheits- und Nachrichtendienste (Shearer 1998; Mandel 2002). Sie alle können – und werden – sowohl im eigenen Interesse wie auch im Interesse von Staaten oder anderen nichtstaatlichen Organisationen tätig werden.

Das im Schoße all dieser Entwicklungen ausgebildete neue Kriegsbild (vgl. insbes. Kaldor 1997, Kaldor 2000 sowie die Beiträge

in Kaldor/Vashee 1997) ist mit den überkommenen Kategorien des Generals von Clausewitz nicht länger zu fassen. Wir verweisen insbesondere auf die folgenden Argumente:

Die *Fragmentierung der staatlichen Handlungssubjekte* stellt die These von der politischen Zweckrationalität des Krieges aus der Perspektive einer Vielzahl von Mikro-Ebenen radikal in Frage. Die Ebene der Gewaltanwendung verschiebt sich „nach unten", die über Jahrhunderte erarbeiteten Regeln der zwischenstaatlichen Kriegführung verlieren sich immer mehr zwischen den Fronten nichtstaatlicher Kriegs- oder Konfliktparteien (Daase 1999). In dem Maße, in dem sich Staaten auf gewaltsame Konflikte mit nichtstaatlichen Akteuren einlassen, gar deren irreguläre Kriegführung übernehmen, untergraben sie die Prinzipien ihrer eigenen Staatlichkeit – und damit auch die Prinzipien der internationalen Staatengesellschaft. Allerdings: die Krise des Staates als Entwicklungsblockade und hauptsächliche Ursache Neuer Kriege betrachten zu wollen (Debiel 2002b: 24ff), und diese im Sinne mancher Dependenztheoretiker allein außenwirtschaftlichen, die Entwicklungsländer welt-wirtschaftlich und geopolitisch marginalisierenden, eine Entwicklung der Unterentwicklung beschwörenden Faktoren zuzuschreiben, reduziert die Komplexität notwendiger Erklärungen in schon nicht mehr zulässiger Weise. Denn: die Erosion des staatlichen Gewaltmonopols insbesondere in Teilen Afrikas begann keinesfalls erst mit dem Ende des Kalten Krieges und der Diskreditierung des Sozialismus als Leitidee staatlichen Handelns. Vielmehr läßt sich schon seit den siebziger Jahren das Aufkommen neopatrimonialer Organisation politischer Herrschaft beobachten: zentriert auf einen Patron, der nicht mehr wie im klassischen patrimonialen System über *private* Ressourcen und Land verfügt, um von dieser Basis aus im Netzwerk von Begünstigung und Loyalitätserwartungen reziproke sozioökonomische Austauschbeziehungen zu etablieren, sondern über den Zugriff auf *öffentliche* Ressourcen und *politische* Ämter., die er zur Etablierung klientelistischer Herrschaftsverhältnisse, zur

Befriedigung seiner Anhänger und zur persönlichen Bereicherung expropriiert (gute Beispiele in Reno 1999). Der *Staatszerfall als Randbedingung* und Begleiterscheinung des Neuen Krieges, die informelle Raubökonomie, in der der Staat weitgehend privatisiert wird, die immer stärkere Aushöhlung der ohnehin nur noch durch Entwicklungshilfeleistungen aufrecht erhaltenen Fassade eines handlungsfähigen Staates (Paes 2002) ist nicht zuletzt das Ergebnis des Handelns einer kleinen politischen Führungsschicht, die sich selbst bereichern, die eigene Macht festigen will. Der Abbau öffentlicher Güter (ökonomische Stabilität, Entwicklung, politische Partizipation und Legitimität) mag eine Folge mangelnder Ressourcen sein – er kann aber genauso gut als gezielte Strategie zum Machterhalt einer Staatsklasse oder einer raubtierkapitalistischen Herrschaftselite verstanden werden: „Patronagenetzwerke funktionieren dort am besten, wo Sicherheit und Prosperität kein Grundrecht, sondern ein Privileg sind...“ (ebd.: 148). Ein Klima der Unsicherheit zwingt den Bürger dazu, staatlichen Schutz beim Patronageherren und seinen Helfershelfern zu suchen – und dafür Gegenleistungen zu erbringen, die entweder materieller oder immaterieller Natur sind.

Freilich – noch wichtiger scheint, dass im Kontext der Neuen Kriege *sich* die herkömmlichen, dem Primat der Politik unterstellten und dem Prinzip von strategischer Rationalität, einheitlicher Führung, Befehl und Gehorsam verpflichteten militärischen *Großverbände* als Hauptträger der Kriegführung *auflösen*. An ihre Stelle treten die Privatarmeen ethnisch-nationaler Gruppen, Partisanenverbände, unabhängig operierende Heckenschützen, marodierende Banden, Mafiagangs: „What are called armies are often horizontal coalitions of local militia, breakaway units from disintegrating states, paramilitary and organized crime groups“ (Kaldor 1997: 16). Dabei schwindet nicht nur die klassische Unterscheidung von Kombattanten und Zivilisten – die Schlachtfelder des Neuen Krieges werden bevölkert von Figuren, die Europa seit dem Absolutismus aus der Kriegführung verbannt hatte:

- dem *Warlord*, einem lokalen oder regionalen Kriegsherrn, der seine Anhängerschaft unmittelbar aus dem Krieg , der Kriegsbeute und den Einkünften des von ihm eroberten Territoriums finanziert (Rich 1999; Reno 1999);
- dem *Söldner*, einem Glücksritter, der in möglichst kurzer Zeit mit möglichst geringem Einsatz möglichst viel Geld zu verdienen trachtet;
- dem *Kindersoldaten*, dessen Beeinflussbarkeit und Folgebereitschaft ihn zu einem gefügigen Instrument des bewaffneten Terrors macht.

Genauer: in idealtypischer Sicht wird die Neue Welt der Privatisierten Gewalt (Mair 2003) bevölkert und umgetrieben von vier *Akteursgruppen*, die alle die Bereitschaft teilen, Gewalt zur Erreichung ihrer Ziele einzusetzen, jedoch differieren in ihren Zielen, Zielgruppen, in der geographischen Ausdehnung ihrer Aktivitäten und in ihren Beziehungen zu staatlichen Gewaltmonopolisten – nämlich *Warlords*, *Rebellen*, *Terroristen* und *Kriminellen*. Warlords und Kriminelle werden eher von ökonomischen (Raub-)Motiven getrieben, Rebellen und Terroristen von politischen; die hauptsächlichen Zielgruppen gewaltsamer Akte, die von Rebellen und Kriminellen verübt werden, sind eher andere bewaffnete Großgruppen (Polizei, Militär, konkurrierende Gangs und Banden), während Warlords und Terroristen ihre Gewaltakte eher gegen unbewaffnete Zivilisten richten; der geographische Bezug der Aktionen von Warlords und Rebellen ist eher beschränkt, richtet sich in aller Regel auf die Kontrolle eines bestimmten Territoriums, während das transnationale Verbrechen und der internationale Terrorismus weltweit agieren; Warlords und Rebellen schliesslich streben danach, das staatliche Gewaltmonopol durch ihr eigenes abzulösen, während Terroristen und Kriminelle des staatlichen Gewaltmonopols ähnlich wie im Hegel'schen Gleichnis von Herr und Knecht nachgeradezu bedürfen: den einen ginge sonst das Bezugsobjekt ihres politischen Kampfes verloren, den anderen – systemkonformen Parasiten der Weltwirtschaft - der

Ordnungsrahmen, der die Verwertbarkeit ihrer illegal gewonnenen Güter überhaupt erst garantiert.

Freilich läßt sich diese reinlich-idealtypische Unterscheidung international operierender nichtstaatlicher Gewaltakteure in der Realität nur selten durchhalten: bestehen zwischen ihnen doch intensive Kooperationsbeziehungen, wenn sie nicht gar selbst kontextabhängig von der einen Rolle in die andere schlüpfen (v.a. Warlord/Mafiaboß und Rebell/Terrorist). Insbesondere hat das Ende des Kalten Krieges die Refinanzierungsmöglichkeiten mancher als Partei von Stellvertreterkriegen agierenden Rebellengruppe bei ihrer jeweiligen Blockvormacht empfindlich beschnitten und sie so zur Aufrechterhaltung ihrer Logistiknetze wie zur Finanzierung von Waffenkäufen in die Kriminalität gedrängt. Andererseits ist es überhaupt nichts Ungewöhnliches, dass Warlords und Mafiabosse ihre höchst persönlichen Machtgelüste und Bereicherungsinteressen politisch, ideologisch oder weltanschaulich zu tarnen versuchen. Wie Dr. Jekyll und Mr. Hyde zeichnen sich die Akteure der Neuen Kriege durch multiple Persönlichkeiten aus – und je länger die Konflikte dauern, in die sie verwickelt sind, desto mehr wird diese Eigenschaft auch auf die regulären Streitkräfte übertragen, die sie bekämpfen. Denn: mit dem Ausbleiben externer Unterstützung sind alle Kriegsparteien darauf angewiesen, ihren Kampf durch die Ausbeutung und Plünderung von Rohstoffen – Gold, Diamanten, Tropenhölzer, Erdöl – zu finanzieren; damit aber verwischen sich die Grenzen zwischen solchen Kriegsherren wie Charles Taylor, Jonas Savimbi oder Samuel Doe und den Offizieren solcher Eingreiftruppen wie etwa der ECOMOG, die eigentlich von der internationalen Gemeinschaft beauftragt worden sind, Sicherheit und Ordnung in Neuen Kriegs-Zonen wieder herzustellen.

Angesichts der so faßbaren *Entgrenzung der Kriegsakteure* – verstanden nicht nur als die Verwischung der Differenz von Regularität und Irregularität, sondern auch als Wandel von ehedem regional oder national verankerten Akteuren zu transnationalen Einheiten - die etwa in einem Staat kämpfen, aber in einem

benachbarten ihre Rückzugs- und Ruheräume (teils auch gegen Widerstreben der dortigen Autoritäten) besetzen – wundert es nicht, dass militärische Gewalt sich immer seltener nach *außen* richtet, in den Bereich *zwischen* den Staaten. Vielmehr kehrt sich ihre Stoßrichtung um, in die *Innensphäre* der zerfallenden einzelstaatlichen Subjekte hinein. Ihr übergeordneter Zweck ist nicht mehr die Fortsetzung des politischen Verkehrs unter Einmischung anderer Mittel, sondern die Sicherung des innergesellschaftlichen Machterhalts von Interessengruppen, Clans, Warlords, Kriminellen; die Garantie von Beute und schnellem Profit; die Erzwingung und Erhaltung von klientelistischen und persönlichen Abhängigkeiten, die Etablierung und der Ausbau von Formen quasi-privatwirtschaftlich organisierter Einkommenserzielung. Schon wird der *low intensity conflict* als Fortsetzung der Ökonomie mit anderen Mitteln bezeichnet (Keen 1998): eher als im zwischenstaatlichen Krieg geht es in ihm um handfeste materielle Interessen, um die Verteilung wirtschaftlicher Ressourcen und Chancen, in welcher ethnischen, religiösen oder ideologischen Verkleidung die Konfliktparteien auch auftreten. Damit einher geht die Auflösung der Unterscheidung von Erwerbsleben und Gewaltanwendung, der fortschreitende Verlust von Zukunftsvertrauen, die Abwertung friedlich-ziviler Kompetenzen und Fähigkeiten, während die Fähigkeiten und Fertigkeiten zur Gewaltanwendung an Bedeutung gewinnen. Die Schichten, die am Frieden interessiert sind, werden an den Rand gedrängt, gesellschaftlich marginalisiert, „...während jene in Friedenszeiten an die Ränder der Gesellschaft verbannten gewaltbereiten Gruppen an Macht und Bedeutung gewinnen und mit der international organisierten Kriminalität, den Waffen-, Drogen- und Menschenhändlern eine untrennbare Verbindung eingehen. Sie haben kein substantielles Interesse am Frieden, denn ihre Macht und ihr neuer Wohlstand hängen an der Fortdauer des Krieges. Wer in Bürgerkriege interveniert, muß daher wissen, daß er dabei nicht nur auf Menschen trifft, die nichts sehnlicher wünschen als den Frieden, sondern auch auf jene, denen das Ende des

Bürgerkrieges ungelegen käme...“ (Münkler 2001). Es sind – frei nach Karl Marx – materielles Sein und materielle Interessen, die das Bewusstsein des *war lords*, des Milizionärs, des Kämpfers für diese oder jene Partei bestimmen. Für den, der vom Kriege lebt, ist die ethisch-moralische oder politisch-wertmässige Rechtfertigung seiner Taten allenfalls ein Sekundärmoment, wie der künstlich erzeugte Gegensatz zwischen Christen und Moslems in Bosnien-Herzegowina vorgeschoben, um hinter diesem Schleier der Bereicherung, dem Profitgier oder der Mordlust umso ungehinderter nachgehen zu können.

Damit aber verändert sich auch die *Ökonomie des Krieges*: rekurrierte der klassische Staatenkrieg noch auf die Ressourcenmobilisierung durch den Staat (Steuern, Anleihen, Subsidien, totale Kriegswirtschaft), passte er die Wirtschaft als Kriegswirtschaft an den *Ausnahmezustand* an, ordnete er das, was sonst dem Markt überlassen blieb, planwirtschaftlich den Anforderungen des Krieges und der Kriegsziele unter (hierzu ausführlich Ehrke 2002), so finanzieren sich die Guerrilla- und low intensity-warfare- Konflikte der Gegenwart aus Kriegsökonomien, die durch die Gleichzeitigkeit von (nationaler) Dezentralisierung und globaler Verflechtung gekennzeichnet sind. Offizielle Machthaber, Interventionsarmeen, Kriegsherren, Warlords und Rebellen organisieren von einander getrennte Wirtschaftsräume, die aber mit den Wirtschaften anderer Staaten und/oder der globalen Weltwirtschaft vernetzt sind. Die nationale Ökonomie *informalisiert* sich. Die Ökonomien des Bürgerkrieges, des Neuen Krieges sind Ökonomien ohne staatliches Gewaltmonopol, Ökonomien mit ungeschützten Märkten, die ihre Akteure vor andere Handlungsnotwendigkeiten stellen als jene, in denen der sich ausbildende Zentralstaat Rechtssicherheit und Verkehrswegesicherheit ebenso garantiert wie Eigentum und Besitzverhältnisse. In einer solcherart dezentralisierten Wirtschaft haben die illegale Aneignung von Gold und Edelsteinen, der Menschen- und Rauschgifthandel, der Zigaretten- und

Treibstoffschmuggel Hochkonjunktur (Jean/Rufin 1999) – und das nicht nur während der Phase militärischer Auseinandersetzungen, sondern gerade auch in den Zwischenzeiten, in denen Fronten begradigt, Kräfte gesammelt, Waffenarsenale neu aufgefüllt werden. Trennende Kulturen und Religionen liefern in der Ökonomie des Neuen Krieges allenfalls den Vorhang, hinter dem Akteure mit klaren wirtschaftlichen Interessen zu erkennen sind – die Kriegsherren, die auf den sich entwickelnden Gewaltmärkten Gewalt als effektives und effizientes Mittel wirtschaftlichen Erwerbsstrebens einsetzen. Die politische Ökonomie dieser Konflikte ist nicht mehr staatszentriert: - die Staaten werden zu Schatten ihrer selbst, während die Kriegsökonomien in regionale und globale, sich der staatlichen Kontrolle entziehende Transaktionsnetze eingebunden werden. Die sich ausbildende parasitäre, über Verbindungen zu vergleichbaren Akteuren der organisierten Kriminalität gar sich globalisierende Mafiaökonomie des Bürger-, Neuen oder Kleinen Krieges demobilisiert rechtmässige Wirtschaftsaktivitäten, bringt die Produktion zum Erliegen, expropriiert humanitäre Hilfe, beschädigt nicht nur die eigene Kriegszone, sondern auch die Volkswirtschaften benachbarter Regionen. „Bürgerkriegsökonomien sind wie schwärende Wunden an den weichen Stellen von Friedensökonomien, die sie mit illegalen Gütern, wie Rauschgift und zur Prostitution gezwungenen Frauen, aber auch durch erzwungene Fluchtbewegungen infiltrieren und zur Finanzierungsquelle des Bürgerkriegs machen...“(Münkler 2001).. Das die (Bürger-) Kriegsökonomie kennzeichnende Moment ist das der *Deinvestitionsspirale*: je länger die Kampfhandlungen dauern, desto mehr schrumpft die Zukunftsperspektive, desto eher verliert die zivile Wirtschaftsweise an Bedeutung, desto schneller gerät die Deinvestitionsspirale in Abwärtsdrehung: „Die unmittelbar verfügbaren Ressourcen werden hemmungslos ausgeplündert, und Investitionen kommen nicht mehr zustande. Am Ende ist im Grunde jeder Einzelne auf Gewaltanwendung angewiesen, um Nahrung und Wohnung zu sichern...“(Münkler 2001). Diese Art Ökonomien

hinterlassen schließlich eine räuberische Gesellschaft, die sich von der des Hobbes'schen Naturzustandes nur noch wenig unterscheidet.

Schließlich: wie erfolgreiche transnationale Konzerne geben die Akteure des Neuen Krieges in ihrer *Organisationsstruktur* das herkömmliche Prinzip einer pyramidal-vertikalen Kommandohierarchie auf, nähern sich den komplexen horizontalen Netzwerken und flachen Hierarchien, die die Führungsstrukturen moderner Wirtschaftsunternehmen kennzeichnen. Zu einem Gutteil ist selbst ihre Kriegführung transnational: sie werden finanziert durch Spenden oder „Abgaben" in der Diaspora lebender Volksangehöriger oder ihren Zielen geneigter Drittstaaten (Tanter 1999); sie greifen logistisch auf einen globalisierten Waffenmarkt zu; sie rekrutieren ihre Kämpfer aus Angehörigen (fundamentalistisch-) weltanschaulich gleichgerichteter Drittgesellschaften; sie nutzen die Dienste weltweit operierender kommerzieller Anbieter militärischer Beratungs-, Trainings- und Kampfleistungen (Shearer 1998); und sie beschränken ihre Aktionen nicht auf das angestammte Territorium oder regionale Kriegsschauplätze, sondern tragen ihren Kampf mittels spektakulär-terroristischer Akte an solche Orte, an denen ihnen die Aufmerksamkeit einer multimedial rund um den Globus vernetzten Weltöffentlichkeit sicher sein kann.

Über Zeit führen diese – allenfalls aus mangelnder Einsicht in die realen Triebkräfte und Bewegungsgründe der Konfliktakteure gern als „ethnopolitisch" bezeichneten - Auseinandersetzungen zur Auflösung staatlicher Handlungssubjekte, zum Niedergang traditioneller Ordnungs-Strukturen und zur Delegitimierung jeglicher im Namen usurpierter staatlicher Autorität umgesetzten Politik. Der wichtigste Unterschied zwischen klassischen und Neuen Kriegen betrifft die überkommene begriffliche wie faktische Trennung von Krieg und Frieden: im Neuen Krieg werden Krieg und Frieden zu nur noch relativen gesellschaftlichen Zuständen. Der Neue Krieg wird nicht erklärt, und nicht beendet: vielmehr wechseln in ihm Phasen intensiver und weniger intensiver Kampfhandlungen,

in denen Sieger und Besiegte nicht leicht ausgemacht werden können. Entscheidungsschlachten werden nicht mehr geschlagen; vielmehr diffundiert die (bewaffnete) Gewalt in alle gesellschaftlichen Bereiche

Anstelle eines Fazits – nur eine frag-würdige Perspektive ?

Mit den geschilderten Entwicklungen verbinden sich aus der Sicht der Lehre von den Internationalen Beziehungen wenigstens zwei bedeutsame Konsequenzen:

1) Die Aufhebung der klassischen analytischen Trennung von Innen und Außen, von Sicherheits-, Entwicklungs- und internationaler Wirtschaftspolitik

Subsystemische gesellschaftliche Akteure werden auf der systemaren Ebene unmittelbar handlungsrelevant, externe Konflikte/Konfliktgründe werden internalisiert, nationale gesellschaftliche Akteure externalisieren sich und/oder treten in Interessenkoalitionen mit vergleichbaren Akteuren in anderen Gesellschaften. Das überkommene state-as-gatekeeper-Prinzip (demzufolge die legitime Vermittlung von politischen und/oder gesellschaftlichen Beziehungen zwischen Angehörigen unterschiedlicher Akteure dem Aussen- vertretungsmonopol des Staates unterliegt) wird ausgehebelt; der einzelstaatliche Rückfall in den Naturzustand unterfüttert und durchdringt die internationale Anarchie.

2) Die Aufhebung des klassischen Interventionsverbots

Der Schutz der Souveränität der Akteure durch das Prinzip der Nichteinmischung in die inneren Angelegenheiten war eine existenznotwendige Bedingung des naturzuständlichen Staatensystems; seine Ausserkraftsetzung durch das Prinzip der humanitären Intervention ebenso wie durch ethnopolitisch motivierte Unterstützung von Volks- oder Glaubensgenossen bedeutet einen erheblichen Schritt vorwärts in Richtung auf

weltgesellschaftliche Organisationsformen internationaler Beziehungen. Im Gegensatz zum durch das klassische Völkerrecht geschützten und geordneten Bereich des zwischenstaatlichen Verkehrs besitzen die Staaten und internationalen gouvernementalen Organisationen in den sich ausbildenden weltgesellschaftlichen Kontexten keine unmittelbaren Eingriffsrechte, werden aber gleichwohl von den Handlungen weltgesellschaftlicher (auch regionaler und lokaler) Akteure mittelbar oder unmittelbar betroffen. Sie suchen sich deshalb für ihr Handeln in Konfliktsituationen eine neue Legitimationsgrundlage – das humanitäre Völkerrecht, dessen jüngere Entwicklungen die Frage zulassen, ob es dabei ist, sich zu einem humanitären Völkerinterventionsrecht zu wandeln.

Die eben beschriebenen Entwicklungen sind noch lange nicht abgeschlossen: die weitere Ausdifferenzierung des Phänomens der Neuen Kriege dürfte noch manche Überraschung erwarten lassen. Eines aber läßt sich bereits festhalten: die bekannte Auffassung des Generals von Clausewitz vom Kriege als eines genuin politischen Instruments, als „...Fortsetzung des politischen Verkehrs, ein Durchführen desselben mit anderen Mitteln...“ (v.Clausewitz 1973:210) stellt die *rationalen* Momente politischen Handelns in den Mittelpunkt der Betrachtung militärischer Gewaltanwendung, bettet den Krieg in den Zweckrationalismus der auf Durchsetzung eigener Interessen gerichteten politischen Handlungssphäre ein. Wo aber – wie in den Neuen oder Kleinen Kriegen – Gewaltausübung zur Lebens- und Erwerbsform wird, wo Konfliktparteien zur Findung, Befestigung oder zum blossen Ausdruck ihrer *Identität* Krieg führen, wo Vertreter partikularistischer Identitäten eine Furcht- und Hass-Spirale in Gang setzen, Andersdenkende unterdrücken und physisch vernichten, um multikulturelle und zivilgesellschaftliche Werte aufzuheben und auszulöschen (Kaldor 2000: Kap.4) – da verliert der Zweckrationalismus des Generals von Clausewitz seine Erklärungsmächtigkeit.

Welche analytischen Konsequenzen haben wir zu ziehen, wenn Konfliktakteure die Auseinandersetzungen, in die sie sich und

andere verwickeln, für ihre eigenen *persönlichen* (Gewinn-, Ausbeutungs-, Herrschafts- und Macht-) Interessen instrumentalisieren, demgemäß einer auf rationalen Prinzipien fussenden Konfliktbearbeitung, dem Dialog und der Kooperation nicht zugänglich sind und an der Beendigung des Konflikts keinerlei Interesse haben – etwa, weil der Friedensprozess die mafiöse Kriegswirtschaft bedroht, aus der sie ihre Ressourcen ziehen, und der Wegfall der Verfügung über diese Ressourcen zugleich auch den Wegfall ihrer Herrschafts-, Macht- oder Einflussbasis bedeuten würde ? Für den Umgang mit Akteuren, die prototypenhaft durch die Karadzics, Milosevics und Mladics – oder auch die Chilubas, Mobutus, Taylors oder Kabilas – dieser Welt repräsentiert werden, reichen die Konzepte und Handlungsanleitungen der traditionellen Friedenswissenschaft nicht aus. Denn: diese Konzepte, Empfehlungen, Perspektiven stehen in guter analytisch-philosophischer Tradition unter Rationalitätsvorbehalt, verkörpern aber eine Rationalität, die von den nicht an einer gleichsam kantischen Vernunft, sondern an der Hab-Gier orientierten Akteuren des Neuen Krieges nicht länger geteilt wird, wenn sie sie denn je teilten.

Unser Problem scheint derzeit darin zu bestehen, dass sich die Neuen Kriege, die Bürgerkriege, die *low intensity conflicts* einem rational nachvollziehbaren global- oder regionalstrategischem Kalkül ebenso entziehen wie einer politisch-sozialen, fortschrittlichen oder gar sozialrevolutionären Interpretation. Statt dessen dominieren irrationale ethnische und religiöse Antagonismen, atavistischer Hass verdrängt die kalkulierbare Geopolitik. Politische und militärische Gewalt wird und wirkt blindwütig, irrational und unerklärbar, produziert diffuse, vielgestaltige, letztlich aber doch eindeutige Bedrohungen. Mit Blick auf den Neuen Krieg, die Kleinen Konflikte, die *Vergesellschaftung militärischer Gewaltanwendung* (in mehr als einer Hinsicht !) kommt es folglich darauf an, ein analytisches und handlungsanleitendes Konzept zu entwickeln, das den Prozess der Innenwendung militärischer Gewalt in all seinen Verästelungen und

Motivationen als politischen Prozess begreift, ihn nicht auf wenige Erklärungsfaktoren reduziert und damit beim Versuch seiner Überwindung zu kurz ansetzt. Die Aussichten auf ein Gelingen dieses Unternehmens sind nicht die Besten: es aber nicht zu versuchen, hieße, die Zukunft den Warlords und Ethnokraten, den Mafiabossen und falschen Religionspropheten zu überlassen.

Literatur

1. Albrecht, Ulrich, u.a. (Hrsg.): *Das Kosovo-Dilemma. Schwache Staaten und Neue Kriege als Herausforderung des 21. Jahrhunderts*. Münster 2002.
2. Altvater, Elmar/Mahnkopf, Birgit: *Globalisierung der Unsicherheit. Arbeit im Schatten, Schmutziges Geld und informelle Politik*. Münster 2002.
3. Ayissi, Anatole: "Der Aufstieg des Lumpenmilitariats. Militärmacht und politische Ohnmacht in Afrika", in: *Le Monde Diplomatique*, Januar 2003, S.18ff.
4. Brühl, Tanja, u.a. (Hrsg.): *Die Privatisierung der Weltpolitik. Entstaatlichung und Kommerzialisierung im Globalisierungsprozess*. Bonn 2001.
5. Clausewitz, Carl von: *Hinterlassenes Werk vom Kriege*. 18. Aufl., Hrsg. Hahlweg, Werner. Bonn 1973.
6. Czempiel, Ernst-Otto: *Weltpolitik im Umbruch. Die Pax Americana, der Terrorismus und die Zukunft der internationalen Beziehungen*. München 2002.
7. Daase, Christopher: *Kleine Kriege – Große Wirkung. Wie unkonventionelle Kriegführung die internationale Politik verändert*. Baden-Baden 1999.
8. Davis, Diane E./Pereira, Anthony W. (Hrsg.) : *Irregular Armed Forces and their Role in Politics and State Formation*. Cambridge 2003.
9. Debiel, Tobias (Hrsg.): *Der zerbrechliche Frieden. Krisenregionen zwischen Staatsversagen, Gewalt und Entwicklung*. Bonn 2002.

10. Dicken, Peter: *Global Shift. Transforming the World Economy.* 3.Aufl., London 1998.
11. Didier, Anne-Line/Marret, Jean-Luc: *Etats „échoués » et Mégapoles anarchiques.* Paris 2001.
12. Ehrke, Michael: "Zur politischen Ökonomie post-nationalstaatlicher Konflikte", in: *Internationale Politik und Gesellschaft* 3/2002, S. 135 – 163.
13. Ellis, Stephen: "The Old Roots of Africa's New Wars", in: *Internationale Politik und Gesellschaft* 2/2003, S. 29 – 43.
14. Freedman, Lawrence: *The Evolution of Nuclear Strategy.* 2.Aufl. London 1989.
15. Freedman, Lawrence: "The Changing Forms of Military Conflict", in: *Survival* 40 (1998), S.39 – 56.
16. Freedman, Lawrence: *The Revolution in Strategic Affairs* (Adelphi Paper 318). London 1998.
17. Geyer, Michael (Hrsg.): *War and Terror in Historical and Contemporary Perspective. American Institute for Contemporary German Studies*, Washington, D.C. 2002.
18. [www.aicgs.org/publications/PDF/warandterror.pdf]
19. Gray, Christian Hables: *Postmodern War. The New Politics of Conflict.* London 1997.
20. Held, David / McGrew, Anthony / Goldblatt, David / Perraton, Jonathan: *Global Transformations. Politics, Economics, and Culture*. Cambridge 1999.
21. Held, David/McGrew, Anthony (Hrsg.): *The Global Transformations Reader. An Introduction to the Globalization Debate*. Cambridge 2000.
22. Herz, John H.: *Staatenwelt und Weltpolitik. Aufsätze zur internationalen Politik im Nuklearzeitalter*. Hamburg 1974.
23. Hoch, Martin: *Krieg und Politik im 21.Jahrhundert, in: Aus Politik und Zeitgeschichte*. B 20 (2001), S. 17 – 25.
24. Jean, Francois/Rufin, Jean-Christophe (Hrsg.): *Ökonomie der Bürgerkriege*. Hamburg 1999.

25. Kaldor, Mary: *New and Old Wars. Organized Violence in a Global Era.* Cambridge 1997.
26. Kaldor, Mary: *Neue und alte Kriege. Organisierte Gewalt im Zeitalter der Globalisierung*. Frankfurt/Main 2000
27. Kaldor, Mary: "Introduction", in: Kaldor, Mary/ Vashee, Basker (Hrsg.): *Restructuring the Global Military Sector*. Bd. I: New Wars. London 1997, S. 3-33.
28. Keen, David: *The Economic Functions of Violence in Civil Wars*. Oxford 1998 (Adelphi Papers 320).
29. Keen, David: Greedy Elites, Dwindling Resources, Alienated Youths. "The Anatomy of Protracted Violence in Sierra Leone", in: *Internationale Politik und Gesellschaft* 2/2003, S. 67 – 94.
30. *Konfliktbarometer 2002. Krisen, Kriege, Putsche, Verhandlungen, Vermittlungen, Friedensschlüsse*. Hrsg.Heidelberger Institut für Internationale Konfliktforschung e.V., Heidelberg 2002.
31. Mair, Stefan: "The New World of Privatized Violence", in: *Internationale Politik und Gesellschaft* 2/2003, S. 11 – 28.
32. Mandel, Robert: *Armies without States. The Privatization of Security*. Boulder, Colorado 2002.
33. Mandelbaum, Michael: "Is Major War Obsolete", in: *Survival* 40 (1998), S.20 - 38
34. McNeill, William N.: *Krieg und Macht. Militär, Wirtschaft und Gesellschaft vom Altertum bis heute*. München 1984.
35. Meyers, Reinhard: "Von der Globalisierung zur Fragmentierung? Skizzen zum Wandel des Sicherheitsbegriffs und des Kriegsbildes in der Weltübergangsgesellschaft", in: Kevenhörster, Paul/ Woyke, Wichard (Hrsg.): *Internationale Politik nach dem Ost-West - Konflikt. Globale und regionale Herausforderungen*. Münster 1995, S. 33-82.
36. Meyers, Reinhard: "Grundbegriffe und theoretische Perspektiven der Internationalen Beziehungen", in: Bundeszentrale für politische Bildung (Hrsg.): *Grundwissen Politik*. Bonn [3]1997, S.313 – 434.

37. Meyers, Reinhard: ”Internationale Organisationen und *global governance* – eine Antwort auf die internationalen Herausforderungen am Ausgang des Jahrhunderts?”, in: *Politische Bildung* 32(1999), S. 8 – 28.
38. Mueller, John: ”The Banality of ‘Ethnic War’”, in: Michael E.Brown u.a. (Hrsg.): *Nationalism and Ethnic Conflict*. Rev.ed. Cambridge, Mass. 2001, S. 97 – 125.
39. Müller, Harald/Schörnig, Niklas: *“Revolution in Military Affairs“. Abgesang kooperativer Sicherheitspolitik der Demokratien*? HSFK-Report 8/2001. Frankfurt/Main 2001.
40. Münkler, Herfried: ”Schwärende Wunden. Humanitäre Interventionen können die Spirale der Gewalt blockieren, doch Frieden können sie nicht schaffen”, in: *Frankfurter Allgemeine Zeitung* No. 2o1, 30.08.2001, S. 10.
    (a) Münkler, Herfried: *Über den Krieg. Stationen der Kriegsgeschichte im Spiegel ihrer theoretischen Reflexionen*. Weilerswist 2002.
    (b) Münkler, Herfried: *Die neuen Kriege*. Reinbek b. Hamburg 2002.
41. Paes, Wolf-Christian: “’Neue Kriege’ und ihre Ökonomien”, in: medico international (Hrsg.): *Ungeheuer ist nur das Normale. Zur Ökonomie der „neuen“ Kriege*. (medico-Report 24). Frankfurt/Main 2002, S.146 -. 163.
42. Porter, Bruce D.: *War und the Rise of the State. The Military Foundations of Modern Politics*. New York 1994.
43. Reno, William: *Warlord Politics and African States*. Boulder, Colorado 1999.
44. Reno, William: “Political Networks in a Failing State. The Roots and Future of Violent Conflict in Sierra Leone”, in: *Internationale Politik und Gesellschaft* 2/2003, S.
45. Rich, Paul B.(Hrsg.): *Warlords in International Relations*. Basingstoke 1999.
46. Shearer, David: *Private Armies and Military Intervention* (Adelphi Paper 316). London 1998.

47. Stroux, Daniel: "Rohstoffe, Ressentiments und staatsfreie Räume. Die Strukturen des Krieges in Afrikas Mitte", in: *Internationale Politik und Gesellschaft* 2/2003, S.95 – 111.
48. Tanter, Raymond: *Rogue Regimes. Terrorism and Proliferation.* Basingstoke 1999.
49. Van Crefeld, Martin: *Technology and War. From 2000 B.C. to the Present.* London 1991.
50. Van Crefeld, Martin: *The Rise and Decline of the State.* Cambridge 1999.
51. Wallace, Helen / Wallace, William (Hrsg.): *Policy-Making in the European Union.* 4.Aufl. Oxford 2000.
52. Wiberg, Hakan / Scherrer, Christian P. (Hrsg.): *Ethnicity and Intra-State Conflict. Types, causes and peace strategies.* Aldershot 1999.
53. Wolfrum, Edgar: *Krieg und Frieden in der Neuzeit. Vom Westfälischen Frieden bis zum Zweiten Weltkrieg.* Darmstadt 2003.
54. Wolkow, Wladimir W.: "Ethnokratie – ein verhängnisvolles Erbe in der postkommunistischen Welt", in: *Aus Politik und Zeitgeschichte* B 52-53 (1991), S. 35 - 43
55. Zürn, Michael: *Regieren jenseits des Nationalstaates. Globalisierung und Denationalisierung als Chance.* Frankfurt am Main 1998.

* * *

Aus: Bernhard Rinke/Wichard Woyke (Hrsg.): *Frieden und Sicherheit im 21. Jahrhundert.* Eine Einführung, Opladen: Leske & Budrich 2004, S.25 - 49

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

RETHINKING THE EU'S CONSTITUTIONAL ORDER: FROM CONSTITUTIONALISM BY STEALTH TO A *POUVOIR CONSTITUANT*?

Michael O'Neill[*]

Abstract

The crisis over the EU's constitutional treaty raises critical questions about the way the Union goes about constitution-making. Despite the decision at the Laeken European Council to broaden the process beyond the narrow and top-down procedure previously monopolised by European Court Justices and the governments of the member states, the failure of the EU's political elite to engage the general public with the constitutional process reflects an abiding disconnection within the EU's body politic that contributes much to abiding legitimacy and constitutional deficits at the heart of EU politics and governance. The previous reliance on permissive consensus and performance as sources of political legitimacy, and a constitutional order built by judicial stealth and trade-offs between the member states in a cumulate series of treaty revisions, can no longer be a reliable basis for legitimising a transnational governance that must be accountable, transparent and responsive to public concerns if it is to gain the public confidence and support required for dealing with the critical problems and policy challenges brought about by globalisation. Although the EU is not a state, and unlikely ever to become a state, it is a polity whose policy-making involves distributive and redistributive decisions. As such, it does require both regime (procedural) and polity (constitutional) legitimacy rather than merely performance legitimacy in order to ensure effective and publicly accountable governance, a quality that must involve the people, not as passive recipients of modest 'top-down' citizenship rights but as a pouvoir constituant.

[*] Professor Michael O'Neill, Jean Monnet Professor of EU Politics, Nottingham Trent University, United Kingdom

The European Constitutional Tradition

Constitution-making is a well-established political art in Europe, though most of the activity here has occurred in the second half of the twentieth century as erstwhile dictatorships gave way to more liberal regimes.[1] The first stage began in 1945 in states where democratic government had been subverted by fascism. A second wave of democratic constitution-making followed the voluntary transfer of power from European imperial states to their post-colonial successor states during the 1950s and beyond. The most recent stage has seen constitution-making in the post-communist states of Eastern and Central Europe following the collapse of Soviet hegemony in1989. This latest activity was confined to making, or more usually to re-making, national constitutions, the better to respond to contemporary challenges. The recent initiative to constitutionalise the EU stands outside this cumulate tradition. It is a novel experience, an attempt to formally constitutionalise a transnational polity. As such, it reminds many commentators of the historically unique experience of building a federal polity in America in the late eighteenth century, a comparator that has attracted much academic interest on both sides of the Atlantic.[2]

Constitutions in contemporary Europe share one fundamental objective, to protect the freedom and rights of citizens by enshrining procedures in the supreme legal order for constraining central power. The primacy accorded to citizens' rights vis a vis government is a relatively recent phenomenon.[3] The constitutional preoccupation with rights only became significant during the inter-war years with the generalized incorporation into many constitutional texts of formal declarations of rights, a natural reaction to growing executive power even in European democracies. This reflected developments in the practice of mass politics, the rise of the party machine, firmer party discipline in parliaments, and so on. The principal concern here was to protect political rights by embedding them in constitutional texts. The social and cultural change brought about after the Second World War gave rise to concern about the so-called 'third generation'

rights, for instance social and environmental rights.

The trend in Europe since 1945 has been not merely to expand the catalogue of rights available to citizens', but to change the normative and legal status of rights, both 'old' and 'new'. Whereas before 1939, "the constitution was still defined in continental Europe as the standard by which public power was defined, above all with respect to legislators, whose actions give rise to law," post-war constitutions came to be seen as the direct source of law, especially of those "fundamental rights that directly empower (and bind) the citizens."[4] It is a process formally rooted in the advocacy and interpolation of citizens' rights, with national constitutional courts entrenching fundamental rights. In short, the European constitutional tradition has given primacy to establishing a rights-based polity, as much as it sets out the institutional fabric and affirms the legal benchmarks for 'good' governance. This means that constitutionalism is an ongoing, an organic process as much as it is an historic or singular 'founding' moment. This organic quality has been very influential for the development of the European Union's constitutional order, even though for the first half century or so of its existence as a polity the EC / EU avoided formally embracing the concept of a constitution to describe its elaborate legal and political order.

The European Court of Justice has long been the driving force behind what some have seen as constitutionalism by stealth, embedding a rights-based constitutional order at the level of the Union, complementing and indeed on the basis of the primacy and direct effect of EC law, shaping the domestic legal order.[5] The rights-based model has had considerable impact on a EU-wide constitutional order.[6] As Weiler sees it, the development of even a limited EU constitutional order has been premised for some of its principal agents, notably the Justices in the Court, "as if its founding instrument were not a Treaty governed by international law but, to use the language of the European Court of Justice, a constitutional charter governed by a form of constitutional law."[7]

European Union case law is a rich source of fundamental rights applicable at every level of the Union, as is the European Convention of Human Rights to which all of the member states are signatories. The fact that national constitutions ensure rights according to variable procedures has prevented a uniform EU-wide basis for fundamental rights, though in practice it does not quite work like that. The national and EU constitutional orders are by no means parallel universes, they do connect and they do cross-fertilize. The consistent application of EC law, its very primacy and its direct effect, has facilitated, in practice if not in name, a rights-based constitutional order. The current treaty arrangements confirm as much, referring to "the fundamental rights as guaranteed by the European Convention on Human Rights and such as they derive from the common constitutional traditions of the Member States."[8]

But the EU's constitutional situation remains complicated, not least because the Union is not a state, its constitutional order rests as much on national constitutional norms with scope for residual conflict where national rights norms clash with those of the Court. A major problem here is the translation of national constitutional norms and procedures from their familiar statal context to a trans-national and non-state context.[9] But there is at least a firm basis here, a medley of shared fundamental norms concerning political, civil, and related rights that gave the EU an implied if not yet a formal constitutional order.

Constitutionalism and the EU

Constitutionalism is a natural response to defective government and it takes many forms. At the very least, it amounts to "a clear conception of government and ministerial responsibility," standards of legitimacy, accountability, transparency in the exercise of public power, sustained by a legal order that approximates the constitutional norms that define the procedures of government and the practice of politics in democratic states.[10] Even though the EU is not a state polity, and is unlikely to become one, "such a change in

organisation would be almost inevitable if governance as understood in European democracies were to be institutionalised within the EC."[11] Although a constitutional impulse has gathered momentum in the EU it is hardly novel. The principal engine of constitutionalism in the EU has long been the Court rather than the politicians, with jurists pursuing a constitutional order almost by stealth, and covertly rather than by design, extending the legal order beyond the narrow confines of rights directly - and in some cases indirectly - related to market-making.[12] The outcome of this process is the installation *de facto* of "a constitution without constitutionalism."[13]

The Court's ideological preference was, and it remains, implicitly federalist. This much is evident from those occasions when the Court over-reached itself, provoking resistance from those concerned that it was pushing the boundaries of its jurisdiction beyond what was intended by the Community's founders, or for that matter enshrined *de jure* in the treaties.[14] The German constitutional court's ruling on the *Brunner* Case rebutted the European Court's attempt to constitutionalise the Community, and in the process to rewrite the German constitution, by assuming a 'right' to rule on the applicability of EU law within the national realm.[15] And since most national constitutions incorporate bills of rights, and the putative European Constitution did not do so until the Charter of Fundamental Human Rights was incorporated into the recent constitutional treaty, it remains the prerogative of national courts to review EC law in the matter of rights to ensure its conformity with national law, and thereby to invalidate any measure that fails to conform with national norms.[16]

The assumption by the Court that it was the EU's constitutional arbiter was always a prescriptive view, for though "the Court's assertion of the supremacy of EC law suggests a federal structure based on the hierarchical ordering of sovereign power, in which the particular interpretation and implementation of general formulations can be devolved down to subordinate bodies,"[17] in the real world the EU is a contested regime with a 'federal deficit' lacking

any cogent constitutional doctrine.[18] But the Court was barely challenged in its implicit constitutional endeavour, and this covert constitutionalism largely occurred by political default. The Justices, for the most part, assumed the Community to be "a federal organization of power, with certain aspects of state sovereignty definitively ceded to the Community". As such, EU measures were assumed to "derive their validity solely from European law and cannot be challenged on the basis of conflict with national laws – even those of a constitutional status – 'without the legal basis of the Community itself being called into question.' "[19]

The Court was able to pursue its constitutional mission precisely because it operated, by and large, without the political constraints that have always been exercised over the common political institutions by governments and national political institutions. National courts, and for that matter, national politicians, have been rather less vigilant where the Court is concerned. Consequently, the Court was able to stretch 'mere' case law, to incrementally fashion its preoccupation with rights into something approaching an informal or quasi-constitutional order.[20]

The European Court has always responded vigorously to what it sees as any challenge to its constitutional authority, seeking to convince national judiciaries that EU law does indeed encompass fundamental rights, by embracing in its jurisprudence all of the common norms and international standards on human rights contained within the corpus of treaties and conventions subscribed to by every member state. So that by an implied judicial consensus, "these rights become EU rights and as such are subject to interpretation 'within the structure and objectives of the community.'"[21] But whenever it has been confronted by the Court on the matter of its assumed constitutional prerogative, especially in any significant matter where there is a conflict between national constitutional norms and a putative rights-based EU constitutional order, the national constitutional order has managed to comfortably see off the challenge.[22]

Critics of the ECJ's presumption to be the Union's principal constitutional arbiter, in effect to be its supreme court, point to significant differences between the national and EU legal orders which already makes for difficulties when national legal systems have to assimilate EU laws and directives.[23] They point likewise to abiding difference in legal cultures, criticizing the European Court's narrow interpretation of rights framed primarily by libertarian and economic preferences related to the norms of a free market, whereas national legal orders are steeped in case law related a more comprehensive model of social rights.[24] As one legal expert sees it, there is an abiding cultural disparity between the Court's view of constitutionalism and facts on the ground such that "this libertarian account of rights has produced tensions in a number of areas." Not least, that "the ECJ has been relatively intolerant of minority language rights, regarding them not just as restrictions on the four freedoms that can increase transaction costs by, for example, requiring multilingual labelling, but also of freedom of expression, although they could be equally interpreted as defending this latter. In *Grogan* (Case C-159/90 *SPUC (Ireland) Ltd v. Grogan,* [1991] ECR I-4683) the dilemma posed by the Irish Constitution's protection of the right to life of the unborn child was largely side-stepped, though the Court's definition of abortion as a 'service' clearly poses problems for the Irish state's attempts to deny its citizens access to it."[25] Despite the assumption of judicial advocates of a law-led European constitutional order rooted in an "overlapping consensus on shared liberal democratic principles and the rule of law..…..substantial differences remain." There are indeed significant differences between the EU and the national legal orders that preclude the Court's role as the Union's constitutional arbiter. All of which makes "the boot-strapping operation of the ECJ in creating a European Constitution....a remarkable example of the self-validating nature of law."[26]

In short, and regardless of the Court's aspiration to be the harbinger of a EU constitutional order, political objections as much

as cultural differences over appropriate legal norms stand in the way. Clearly, if there is to be a formal EU constitutional order it cannot come about by stealth on the back of legal rulings handed down by unelected Justices, but only from political decisions taken by elected politicians, and ultimately with the express consent of the people at large.[27]

The EU constitutional order that has emerged thus far is essentially, as we have seen above, a rights-based order rather than the institutional power map of the conventional democratic constitutional model, a contract with 'the people'. It assumes that fundamental rights "must be reserved in European jurisdiction to those rights which immediately derive from the constitution and whose validity can be effectively guaranteed by judges, even against the actions of national legislatures."[28] Moreover, these rights are the so-called classic rights that guarantee liberty and equality, and include political rights such as the right to elect and to be elected and constitutional guarantees to property.

Accordingly, in this model social rights and other third generation rights are excluded from the generic EU constitutional order because their relevance and appeal varies widely between the member states, and "their specific content is determinable only through decisions of national legislatures and the market - not by means of constitutional adjudication."[29] Furthermore, their specific legal content rests on legislative enactments which themselves reflect variable ideological or party political preferences. And, not least, they depend for their application on market conditions and the distributive public choices that are made by the EU's member states about where to expend ever-scarce financial resources.

Although this rights-based legal order is indeed a rich source of constitutional doctrine in the Union, it is nevertheless an incomplete and a contested one. Moreover, because it is constitutionalism enacted more by stealth than by political design, without directly engaging the political authorities let alone connecting with the general public, it lacks the regime legitimacy

accorded by overt public consent, a *pouvoir constituant*, to democratic constitution-making elsewhere. Instead, it is the outcome of arcane legal judgements that avoid many of those political and institutional issues normally associated with national constitution-making. And with good reason, for the EU's Justices have been reticent about challenging the national constitutional order head-on.

To attempt to stretch even the malleable concept of constitutional rights as this applies to the EU, beyond what might reasonably be expected of a supranational legal order established 'merely' to adjudicate a common market, for unelected Justices to lay claim to be the *avant-couriers* of a common constitutional order, strains to the very limit the idea of democratic constitutionalism. For a constitutional order to perform its essential task, that of legitimising the exercise of power and authority in a polity, requires as a *sine qua non* political consent expressed as public approval. This legitimacy deficit has pervaded the EU's constitutional endeavour from the start and it remains no less of a challenge for the Union's current political elite as it attempts to confront the fall-out from the recent failed attempt to establish an EU constitutional order without properly connecting with the people at large.

From Modern to Post-National Constitutions

Although judicial action does contribute, and quite properly so, to the dynamics of constitution-making in the EU as in other democratic polities, the process must be a political one rather than one left to unelected Justices. Constitutions in democratic polities are essentially contractual arrangements, a political bargain made between the principal stakeholders, the outcome of transparent on the record negotiations about the architecture of the political order. An architecture which, if it is to work effectively, must be broadly acceptable to all those who submit to its institutional procedures, accept its rules, and subscribe to it norms and values.[30] Above all, constitution-making involves making difficult choices, about how to organize the political order, about which particular institutional and

procedural arrangements are feasible, about the fundamental principles governing the body politic.[31] In short, constitution-making is too important an endeavour to be left merely to judges, however idealistic, wise, benevolent or well-intentioned they might be.

This constitutional undertaking is rather more an art than a science though political science, both as normative theory and empirical institutional and comparative studies, has provided would-be constitution-makers with the basic meta-theoretic and empirical material from which to construct the constitutional fabric. Above all, the art of constitution-making is as much a pragmatic as a philosophic endeavour. It depends on relating general principles and fundamental norms to the practical task of building a legitimate and sustainable political order. Constitutional rules, if they are to work, need to be grounded in hard experience not in nebulous ideals. For although the rules of a constitutional order may be imposed by political elites without any real cognisance of public preferences this is hardly a recipe for a durable constitution let alone for stable governance. Popular consent and for that matter public 'voice' or participation, are indispensable for fashioning the constitutional order in any contemporary polity that claims democratic credentials.

This is hardly a new idea, but the public's voice is heard much less in the process of constitution-making than it ought to be, even in democratic polities.[32] Public involvement in the constitutional order does require a new approach to making constitutions, it "means that constitutional documents cannot be treated in the abstract, divorced from the power systems of which they are a part and the political cultures from which they grew, and to which they must respond."[33] The EU tried to address this problem by a change of procedure, moving from the narrow IGC formula, a suitable forum for negotiating an international treaty but hardly for democratic constitution-making, to a constitutional convention, a deliberative exercise bringing together not only government representatives but elected politicians of every hue, as well as representatives from civil society. But in view of the negative reaction of the wider public in the

recent ratification referendums to the Constitutional Treaty drafted by the Convention, a response mostly unanticipated by the EU's politicians, one might well question whether even this novel consultative exercise was quite as open or as genuinely participatory as it was claimed to be by the political leaders who agreed to it at the Laeken Council (2001).

Constitution-making in the modern world is, by its very nature, problematic. It involves making difficult choices that must relate underlying political values to procedural practice, striking a balance between order and representation, power and participation, both currently and for the foreseeable future. Hindsight is always easier than prophesy, yet the future dimension is critical in as much as constitutions must be built to resist difficult times, unforeseen challenges ahead, and "the most difficult negotiations in constitution-making are those dealing with future institutions and future relationships between existing institutions."[34] All contemporary constitution-making faces this daunting challenge, and in this matter the EU has been unexceptional. Indeed, the very nature of the EU polity adds to the problem in so far as the Union "is an evolving political environment of integration which plays host to a still emerging, yet decidedly plural, maelstrom of national, private and community interests, each seeking to promote their views of Europe (and) as a consequence, the formulation of a European Constitution – or the constitutionalisation of the integration process – would necessarily appear to be a step into the unknown."[35]

Modern constitutions tend, for the reasons outlined above, to be eclectic, their founders borrowing freely from other constitutional traditions. The EU's early experience of incremental constitutionalism, and what occurred in the recent experience of formal constitution-making, follows this pattern with cross-fertilization between quite different constitutional practices, drawing on two distinct but mutually reinforcing bases: on the one hand, the distinctive but complementary constitutional traditions and practices of the member states, and on the other cumulate EC / EU case law

with its implicit constitutionalism. Above all, there is clearly normative and procedural borrowing here from the broad tradition of federalism, a tradition expressly concerned with distributing and balancing the right to exercise legitimate power between different levels of government. Indeed, some academic commentators see the evolution of a EU constitutional order as corresponding closely to the federal tradition, though for the most part those writing about the EU interpret federalism in this sense as process rather than as an outcome whose express purpose is to establish a trans-national federal state.[36]

The definition and no less the application of classic federalism is changing nowadays - in no small measure a response to the challenges of post-national politics - and not least as a response to managing globalisation. Some commentators see this challenge as nothing less than a fundamental shift in both the meaning and structure of the traditional federal model, an adjustment that better reflects the demands of democratic governance in a post-national constitutional order, a development in which the EU is supposedly in the vanguard.[37] As Elazar sees this historic shift, much of what amounts to the constitutionalisation of trans-national regimes such as the EU "is what has classically been known as federalism; that is to say, the combination of constitutional choice, design, and institution-building to accommodate both existing states and trans-state linkages by combining self-rule and shared rule."[38]

This amounts to a fundamental refashioning of the classic federal model, whereby governance was once conceived of as being anchored in a hierarchic state and with the critical political bargains negotiated between key actors located horizontally at different territorial levels. The contemporary revision of this classic federal model adapts the post-Westphalian polity to the task of managing diverse preferences and competing interests between the tiers of a multi-level, but above all a trans-national polity. A polity whose respective levels of political and judicial authority are far from being a hierarchy of authority and compete over their respective claims to

power, authority and over the exercise of basic governance competences. To constitutionalise this arrangement is a challenging endeavour requiring novel procedures, and one that approximates to Watts' definition of contemporary federalism as a system of shared power whose basic notion involves not a state-like polity but rather "the combination of shared-rule for some purposes and regional self-rule for others within a single political system so that neither is subordinate to the other."[39]

Federalism in this broad sense has become a fashionable narrative for describing the logics of the post-national polity. Covell, for instance, sees this as process rather than as an end state, a federalisation process that applies to the EU's evolving constitutional order not as "just one choice, but a series of choices about matters such as the division of powers and relationships between levels of government." Moreover, " these choices have implications for the future balance of powers between centre and units, between the national components of multinational states and between political actors in the form, for example, of elites, political parties and interest groups."[40]

There is no consensus amongst the EU's member states about adopting even this non-statal variant of federalism for making a constitutional polity at the European level. In part, the problem is cultural in as much as federalism has quite different meanings within Europe's various political traditions, not least in those member states with a unitary legacy of governance shaped by a preference for centralisation, where any concept of sharing power between political authorities is seen as a recipe for political chaos. Or where a federal tier, located beyond the nation state, is seen as merely a potential rival to national power.[41]

Indeed, indiscriminate borrowing from any prior constitutional model, federal or otherwise, is bound to be problematic. For broad consensus is indispensable if any constitutional model is to take root, become established, is to acquire legitimacy with the general public. And though "constitutional

architects and designers can borrow a mechanism here or there....in the last analysis, these mechanisms must be integrated in a manner that is true to the spirit of the civil society for which the constitution is designed."[42] But as we have seen above, the EU constitutional order, such as it is, has so far been judicially constructed. And as such, it is remote from the people at large it is not in any meaningful sense firmly rooted or embedded in a fully-fledged European civil society. For that matter, European civil society is at best inchoate. All of this adds to the difficulty of putting in place an EU constitution that is broadly acceptable, both to the member states and to their citizens.

And this is only one aspect of the challenge facing the EU's would-be constitution-makers. Another problem is the lack of agreement about what the finished article, the EU's *finalité politique* should actually look like. For the EC / EU was always and remains a deeply contested project. On the one hand, the implicitly federalizing tendencies in EC law have impacted significantly on the development of the Community's constitutional order altering, and dramatically too, the very procedures, structures and norms that frame the conduct and help to determine the policy goals of national governance, as well as affecting the conduct of the European nation state and its inter-relations with the EU. But on the other hand, and notwithstanding the latest attempt to formalise the cumulate treaty base as one composite constitutional treaty, EU constitutionalism reflects the Union's status not as a federal polity, a state per se, but rather a confederation of nation states. There is, for instance, no automatic right to voluntary withdrawal or secession in a federal state as there is in the EU.[43]

This mixed quality, of a polity caught between statehood and regime status, has shaped - and continues to shape - the Union's constitutional destiny. And the watchword here is constitutionalism as process rather than as outcome, the fine-tuning of a treaty based in law rather more than as once and for all political *finalité*. The sophistries of eurosceptic opinion notwithstanding, the EU is

engaged now, as it was during its earlier treaty-making stages, in establishing a constitutional space that implies "no federal big bang…but a continuous mutual influence is taking place between these respective levels of constitutional experience."[44]

The implications of this cumulate constitutionalism are, nevertheless, far-reaching for both the national and EU levels of governance. This should not be underestimated, for "it is no longer possible to approach Constitutional Law in EU member states as if the links among them were limited to common historical and cultural ties, disrupted by occasional confrontations and discord. Nor is it possible to deny that the EU has brought about a profound transformation of the State - a development that obliges us to rethink old categories and create new ones."[45] The critical point to consider here, as it is in assessing the distribution of power in a formally federal or federalizing polity is that of the balance between these distinct, occasionally competing, but over-lapping national and EU constitutional orders.

It has been the genius of the EU polity to avoid in its cumulate constitutional development a stark confrontation between these respective levels of power. On the one hand, the EU is required by the terms of its treaty (Article F.1 TEU) to respect the national integrity of the member states, their responsibility for representing primordial national identities in the shape of historic political communities. Whereas, the very principles of direct effect and the supremacy of the EU's legal (and by implication, of its constitutional order) ensures that the member states use EU law as a primary resource, a normative referent for their national constitutional orders. The plethora of EU legislation in a growing range of policy domains serves to reinforce this pervasive sense of an overarching European political order. And this, in turn, it has lent momentum to the accelerating process for removing the complex layers of successive treaties and establishing in their place one definitive and similarly overarching EU constitutional order.

The urgency of this task grew during the 1990s with the extent

of the challenges facing the Union, contributing to the pressure to adopt a formal constitutional order to replace one rooted in an arcane legal order. The defining moment here was the impending enlargement scheduled for 2004. Few of the EU's political leaders disputed the need to address this challenge, some of them led by German foreign minister Joschka Fischer even promoted the need for a new Constitution the better to equip the Union polity and its decision-making procedures with legitimacy for taking the difficult policy choices ahead.[46]

But the case for wholesale constitutional reform was not made to the wider public. So, what some insiders saw as the EU's constitutional moment seemed to many outside the Brussels' beltway or those national chancelleries behind the constitutional drive as merely lobbying by privileged insiders more concerned to advance their own narrow claims to institutional power instead of reaching out to the wider European public. Permissive consensus, the longstanding claim to authority of the EU's political class, simply assumed the existence of popular support for whatever the elite does to advance European construction. In an age of rising scepticism about politics generally, and political leaders in particular, this was no longer a reliable basis for governance at the European level.

Despite the novel use of a Convention to widen deliberation on the Union's constitutional endeavour, the process has barely engaged the public's interest in the outcome. A *Eurobarometer* poll conducted after the Convention had completed its task indicates little public knowledge about what had taken place, the details of the exercise, despite some indication of underlying public support for the general idea of a Constitution.[47] There was no discernable popular involvement and the Convention's outcome did little to "constitutionalise ordinary politics." Even than that, the elitist legacy of EU constitutionalism, its covert nature, and above all the monopolization of influence over the process by political and legal elites, has deprived the process of what Sajo calls "constitutional enthusiasm," a situation whereby "emotionally grounded

identification with the constitution'' ensures ''unconditional bindingness'' and emotional support from the wider body politic.[48]

The EU's constitutional procedure lacks the critical resource of popular support, elemental for what should be a democratic endeavour because, unlike constitutionalism in national and democratic polities, it ''has never been validated by a process of constitutional adoption by a European constitutional demos, and hence, as a matter of both normative political principles and empirical social observation, the European constitutional discipline does not enjoy the same kind of authority that may be found in federal states where their federalism is rooted in a classic constitutional order.''[49] In essence, what Weiler means by this observation is that the all-important 'who decides, who decides' question that determines any constitutional outcome has been resolved in the EU in favour of the few not the many.[50] And although the Convention on the Future of Europe did widen the social constituency for deliberating the EU’s constitutional future, including a broader constituency of stakeholders than is the case in the Intergovernmental Conferences that had previously negotiated EC / EU treaty changes, it was still composed of a narrow cohort of stakeholders, with little by way of substantial involvement by European civil society.

This development did little to dispel the abiding impression amongst the wider EU public that constitution-making, even in the hands of politicians rather than unelected Justices, was still essentially an insiders' game. One consequence of this is that the case that needed to be made for the EU requiring constitutional ballast went largely by default. Another aspect of the EU's current constitutional challenge is to ensure that Europe's emergent trans-national political order accommodates these democratic norms and procedures that are elemental to the national constitutional order, by no means easy in a polity without a demos or even any clear sense of political identity.

The lack of citizens' affective identification with the EU polity

was apparent once the constitutional process was opened up, handed over to the public in the referendum campaigns to ratify the constitutional treaty. Commentators who have acknowledged the Union's constitutional shortcomings, and who saw the Convention as a potential "community-mobilising moment" that facilitated "the bonding of political community" throughout the Union were hardly surprised by this outcome, remaining cautious about the prospects of even this belated deliberative exercise for legitimating the EU's inchoate polity. For even if the public could somehow be persuaded by such a novel event, motivated by its outcome, any positive pay-off will be at best "a long term gambit."[51] The EU's publics are simply not used to engaging in a post-national constitutional conversation and regard it with a mixture of suspicion and indifference. It will take time and careful nurturing by the Union's political class, and altogether more convincing agencies for popular participation in the Union's constitution-making to bring them round to the idea of a formal Constitution. Facilitating the citizens' 'voice' was hardly a priority for most of those politicians who colonized the Convention, or for the governments who had the final say in the following Intergovernmental Conference.

The evidence here is worth considering: that after a four year long and a well publicised process, the results of a *Flash Eurobarometer Poll* published to coincide with the presentation of the final draft of the constitutional treaty to the European Council at Thessaloniki (June 2003) showed that 55 per cent of respondents had not even heard of the Convention and only 32 per cent knew that its objective was to produce a constitutional treaty.[52] At best, popular support for the constitutional endeavour was second-hand and based on rational assumptions about the need to 'tidy up' or to otherwise reform institutional procedures. The failure of the constitutional treaty to positively resonate with the EU's publics is a stark reminder that any future constitutional endeavour must take proper account of the social dimension of constitutionalisation in a polity that quite simply lacks the emotional appeal of primordial national or sub-

national polities. It suggests, too, that a quite different social process is required to constitutionalise the Union if its formal outcome is to have affective resonance with the citizens.[53]

The challenge of engaging the people in the constitutional process, though daunting, is nevertheless not a hopeless one even though a European demos is not its likely or intended outcome. Europeanization in this sense "does not mean that there is insufficient interest in the *common European future*".[54] A minimum though by no means a sufficient condition for overcoming the palpable "lack of enthusiasm regarding the (EU's) common constitutional traditions and values" is surely to encourage public debate, to open up the deliberative process to a wider audience than those who participated in the Convention.

Few commentators, other than pure idealists, expect the European Constitution to embed a European demos, or even to democratize the Union in the way that national constitutions have democratised and legitimised Europe's national polities. But democracy is part of the solution to the present lack of popular enthusiasm for the constitutional project, in as much as democratic norms are now more widespread and resonate with public concerns about governance at every level. Few would demur from Sajo's observation that "no constitution can be legitimate in the free world if it does not serve democracy. Constitutional regimes will suffer a legitimacy deficit if not operated according to the Community's expectations of democracy."[55]

Constitutionalism and Democracy

Constitutionalisation and the democratisation are complementary projects, in the EU as in any other modern polity that subscribes to democratic principles. A transparent constitutional order is regarded as a precondition for a democratic community.[56] Yet the construction of the EU polity, its history as a remote and largely technocratic project driven by elites is hardly conducive to embedding democratic principles. The EU's institutional shortcomings as discussed above

are clear to see and they invite reform, a political reflex wholly consistent with liberal constitutional norms. Nevertheless, some political theorists take the view that the liberal variant of democracy remains unsuitable as a constitutional model for the EU.[57]

The application of conventional representative democratic procedures sits uneasily with a confederal polity lacking demos, without the means for a common conversation conducted in a singular language about policy preferences and the broader values that inform them, and all mediated by common political agencies such as parties or a Europe-wide mass media. Indeed, critics of contemporary liberal politics tend to the view that even in national polities, these liberal institutions are devalued, overtaken by the mobility of capital, the impact of the cumulate forces of globalisation which easily out-manoeuvre traditional representative institutions as the effective watchdogs of the general interest vis a vis the ever more powerful executive, bureaucracy and corporatist interests. Some commentators maintain that unique circumstances require entirely novel procedures and make the case for a radical republican variant of democracy.[58]

The republican narrative prescribes a more open and inclusive political order, placing much less emphasis on passive or 'top down' democratic procedures, or on abstract rights enshrined in law, and preferring instead a civic culture firmly rooted in an politically alert, an active stakeholder citizenry engaged as full members rather than passive bystanders in a genuinely deliberative democratic conversation between themselves, but above all with their governors. In this radical democratic model the public interest is determined, not by political elites or for that matter through intermediation by elected representatives with the specialized policy-makers who are, after all, for the most part members highly disciplined and centralized political parties, by any definition elitist institutions. Instead, well informed and active citizen-stakeholders are seen in this narrative as the key agents of political and social transformation, the interlocutors of the public interest, the best guarantors of a just

and democratic society. Moreover, a pervasive sense of civic virtue is seen here as the surest defence against elite duplicity, the most effective safeguard against privileged special interests and indifference to minority interests.[59]

As one advocate of republicanism at the EU level sees it, ordinary citizens under present arrangements cannot be said to consent in any meaningful sense to policies enacted in their name. Accordingly, a people-centric - though by no means a populist - Union is indispensable for revitalizing the European project. And this, in turn, requires a meaningful constitutional endeavour, for constitutions establish the parameters of power, "a formal setting out of the rules in accessible form after an extensive public discussion or rather series of discussions among the multiple publics that constitute the population of the EU, would in my view, go far to reverse the cynicism and disillusionment which is so widespread in relation to the European Union."[60] Moreover, the times are ripe according to those who share this outlook for installing an effective transnational democracy at the EU level precisely because of cultural and technological shifts that arise from deeper structural changes underway in the international political economy.

The EU's very diversity, the absence of a singular identity enhances more than it detracts in this narrative from democratic potential. The only way to ensure popular engagement with an EU-wide constitutional and democratic order is to escape the constricting historical legacy of European state-building and national constitutionalism, replacing it with a model that takes account of the new pluralism, of multiple identities, a multi-level system of political and governance that both reflects and accommodates Europe's diversity. The very complexity of European civil society, lacking demos, requires an inclusive constitutionalism rather than the more familiar top-down process associated with nation state-building. Or for that matter, the narrow rights-based constitutionalism of the EU's preceding constitutional order.

The clarion call of the radical constitutionalists is to involve

civil society in the process at every level through citizen-based action groups, political organizations, NGOs, trades unions, church bodies, womens' groups. In short, this is what Habermas defines as a "Europe-wide integrated public sphere…in the ambit of a common political culture: a civil society with interest associations: non-governmental organizations; citizens' movements; and naturally a party system appropriate to the European arena."[61] The political solidarity essential for cementing ethnically plural and linguistically polyglot citizens in a cogent, a truly democratic constitutional order is, paradoxically, dependent on acknowledging Europe's social and cultural diversity, for "what unites a nation of citizens as opposed to a *Volksnation* is not some primordial sub-state but rather an inter-subjectivity shared context of possible understanding."[62]

For as Kuper sees it the EU has real democratic potential as long as its would-be constitutionalisers build on its very diversity. There is no one constituency in the EU, a single, supreme sovereign body that can be the EU's "ultimate source of authority." Moreover, this is hardly a recipe for sound governance, for such an attempt to impose homogeneity, the illusory quest to establish a singular European identity, a single people, would surely be damaging, in light of the EU's multiple diversities, its very contested-ness as a polity. On the contrary, this author and other cosmopolitans who make the same case, see the Union's constitutional future as one rooted in multiple identities and multi-level governance, not in following the classical statal model based on the supposed but often synthetic cultural homogeneity that sustains national patriotism.

This is a complicated process, and one that can only be the outcome of political and indeed social transactions rather than merely conferring legal rights on the Union's citizens. A process that involves, in Kuper's view, "a double conceptual disengagement: of citizens from nationality and ethnicity and of democratic constituency from territory defined nationally, and in some cases from being defined in territorial terms at all." On one hand, the citizen's individual rights and obligations of EU membership "must

be separate from and not dependant on (prior) membership of some community where membership is defined in national or ethnic terms. One may – usually will – have these identities as well, but they could pertain in particular to nations other than those which happen historically to have predominated in the definition of the multilevel, non-homogeneous wider supranational communities now emerging, of which the European Union is the pre-eminent example." But on the other hand, "the simple identification of the democratic constituency with the territory of the nation state and sub-order democratic communities with regional and local territorial divisions of that state becomes increasingly unsatisfactory."[63]

There are some large, indeed ethereal assumptions behind this claim for a prospective democratic transnational political order. For it requires something more substantively meaningful as the basis of political belonging and social solidarity than to assert the authenticity of rather vaguely defined cosmopolitan values, the claim usually offered by its advocates as the cement that binds post-national citizens in a common political endeavour. And a more feasible agency for transforming European political culture than the post-modern technology that enables formerly disparate and physically disconnected citizens to communicate and converse within an electronic or virtual European public space.

The real question here, as it always is where a radical, untried political project is mooted is that of agency, of how to facilitate effective participation by the public at large in a meaningful, an effective transnational conversation. This requires more than wishful thinking and it is no simple endeavour. As David Held, who subscribes to this broad prospectus for re-imaging the boundaries of political membership beyond the historic bounds of 'thick' or primordial national identity, sees the challenge here, "the problem of democracy in our times is to specify how democracy can be secured in a series of *interconnected* power and authority centres…..Democracy within a particular community and democratic relations between communities are interlocked, absolutely

inseparable, and ….new organizational and binding mechanisms must be created if democracy is to survive and develop."[64]

This is easier to prescribe, less easy to achieve but the EU's elite so far has barely considered the problem of citizen engagement. It hardly seems to be high in their priorities, other than the platitudes that figured in the Laeken Declaration that launched the constitutional Convention. Yet the public at large must become more involved, be better informed about the available policy options and their likely consequences if the EU's emergent constitutional order is to at least reduce its presently yawning democracy and legitimacy deficits. The first question to be addressed here is whether such a radical, indeed visionary politics is feasible in a Union still dominated by a narrow elite whose decisional procedures are arcane, its institutions geographically and culturally remote from the citizens?

There was little evidence during the Convention of public engagement with the constitutional issues. But the reaction of the public during the bungled ratification, the widespread sense of unease about some aspects of the constitutional treaty amongst citizens from every social group and in most of the member states, whether or not they had the opportunity to exercise 'voice' directly through a referendum vote, confirms that a liberal elite continues to act in the people's name though largely out of touch with their abiding concerns, and hardly persuaded of the need to engage these citizen stakeholders in a conversation about European futures. This merely confirms the limits of the representative democracy model as an appropriate source of legitimacy for the European project.

There are, of course, substantial difficulties in the way of realising such a radical constitutional order for the EU. What is clear from recent events is the lack of democratic vitality, the remoteness of the principals from the body politic, the need - indeed the demand made apparent during the referendum campaigns on the ratification of the constitutional treaty - that citizens be more directly engaged, better consulted about developments so as to ensure that the Union

acquires the legitimacy required for undertaking collective decisions with far-reaching implications for its citizens. Even if EU democracy, for the time being and in the absence of an alert and mobilised civil society, continues to depend on its imperfect liberal and unrepresentative political institutions, these institutions must be made to work better than they presently do, taking greater account public concerns, if the EU's constitutional endeavour is to acquire greater legitimacy and popular approval.

Democratisation, connecting the EU more surely with its popular base, or at the very least resolving the EU's current democracy deficits, the result of its unusual political arrangements is a more far-reaching constitutional endeavour than was envisaged by the Union's political leaders when they launched the latest round of treaty revision at the Laeken Council. It requires something more substantial by way of public engagement than merely another elite bargain over the treaty, the familiar trade-offs between the Union's policy insiders and vested interests. The EU's political class agreed for the first time in the discussions leading up to the Laeken Declaration to launch a constitutional Convention, a more consultative, less exclusive procedure for debating constitutional options. In view of the hostile public reaction in some EU member states to the constitutional treaty that was the Convention's outcome one might well conclude that this was indeed too little and too late to prevent a backlash from a public too long taken for granted during the years while the political elite was busy constructing its grand design. This does not invalidate the Union's constitutional process but instead makes even more urgent the need to underpin this disjointed and disconnected polity with constitutional ballast.

Does the EU Need Constitutional Ballast?

It is assumed in what is written above that the EU does indeed need a formal constitutional order to ensure more efficient decision-making, better institutional fit, more responsive policies to meet current global challenges. But this case should not be taken as read. It

has to be made, as it increasingly was by the EU's political leaders in their deliberations during the latter part of the 1990s. But in the light of events, as the draft constitutional treaty crashed after heavy referendum defeats in two of the EU's founder states it is clear that this case was not made as effectively with the public at large as it might have been. The case for giving the EU constitutional ballast was largely taken for granted.

The case for a European Constitution echoes the case made for any formal mapping of institutional power, charting 'who does what, when and how' in a polity. This is the very same constitutional rationale that has informed the processes of accountable, legitimate and transparent governance, whether in states or non-statal polities, throughout the democratic era. The requirements developed over the past century or so for installing a legitimate and stable political order the better to reconcile the competing demands of what Robert Dahl called the 'democratic dilemma,' the requirement of balancing order and representation, apply equally to non-statal polities committed to democratic norms and liberal values, and especially where policy decisions are made that affect the citizens. For the EU is a polity and one, moreover, that bestows considerable political and economic power on its institutional actors. The EU polity is increasingly involved in some key areas of public policy, it disburses collective goods, and it exercises governance. For these reasons it should have proper constitutional underpinning.[65]

Although the EU is not a state, nor likely to become one, the argument that it does not need proper democratic procedures, transparent means for legitimising the decisions of institutional office holders taken on behalf of, in the name of, its citizens, is wholly fallacious.[66] As a polity, and a polity that overtly subscribes to democratic norms as a condition of membership, the EU does indeed require its own form of constitutional authority in order to "satisfy the general criteria that apply to the legitimation of any liberal democratic system."[67] Legitimacy in the constitutional sense relates both to the regime per se and to the institutions and procedures

through which power is exercised. Regime legitimacy is especially pertinent for the EU as a non-statal polity and a regime type with few if any historical precedents to provide a normative or a practical benchmark for its legitimation.[68]

Both forms of legitimation are essential for constitutionalising what is, measured by the conventional yardstick of governance, a novel regime, aptly described by one observer as *un objet politique non-identifié*. The EU is not a state polity but it does, nevertheless, intrude into the everyday lives of its citizens. The problem, however, is that this polity has to date been constitutionalised by default, with regime legitimacy taking precedence over polity legitimacy when in fact both aspects of legitimacy are indispensable for a properly grounded and stable constitutional order.[69]

The critical question here is what sort of constitutional arrangements are appropriate for legitimising a non-state polity? Clearly, the EU is not a primary political community, it does not have first call on the loyalties of its citizens. The very fact that the Union consists of pre-existing and historic polities, the member states, familiar to their citizens who have invested them over time with primordial allegiance is bound to influence the shape of the EU's constitutional endeavour. The EU polity has other peculiarities that have consequences for its constitutional order. With the partial exception of the ECJ, whose judgements have primacy and direct effect in those policy domains where European law applies, the EU's principal institutions are not politically sovereign within the EU's territory in any way that remotely corresponds to national political institutions.

On the contrary, the available polling evidence on political affiliation and identity confirms that "there is a widely and deeply-held sense in member state electorates that the central political institutions of the member states are (and should remain) the dominant and decisive force of allegiance and activity within the topography of the EU, and that, as far as the populations of these states are concerned, their polity's continuing membership of the EU

and its agreement with or acquiescence in its policy are at its discretion, and not to be taken for granted."[70]

In these circumstances constitutionalisation of the EU should be based on pragmatic desideratum as much as on the drive to consolidate rights, or on any vague appeal to shared European values, let alone an elusive European identity. This expression of social solidarity may eventually emerge, but if it does it will be as a consequence, an effect rather than a cause of a common constitutional endeavour that connects with popular concerns across the EU. In the meantime, the constitutional imperative is to find a way of legitimising the EU's institutional response to the contemporary challenges that confront it here and now. And to do so in what is a non-statal polity by reconciling deep-rooted and distinct domestic constitutional traditions within a cogent, over-arching constitutional fabric appropriate for a Union that binds twenty-five quite separate national polities within a common framework that is capable of responding to the unprecedented challenges posed by accelerating globalisation.[71] Some commentators doubt whether the constitutionalisation of the Union can rise to this challenge, let alone to remotely fulfil the grand objectives normally associated with historic constitutional endeavour in a democratic polity in touch with, accountable to its citizens, though historical precedents do give rather more cause for optimism. Many constitutions, constructed as responses to deep-seated political and cultural crises, have in fact more than met the expectations of their founders. But this has never been tried before in a trans-national polity.

This is certainly a daunting task but this is no reason to avoid the challenge as the EU confronts imminent but above all common problems in key aspects of public policy that no one member state can reasonably be expected to resolve on its own account. Regime legitimacy is necessary political capital for addressing policy challenges in any polity, and no less so for the collective endeavour that confronts the EU as it tries to reform its welfare arrangements, respond to the competitive challenge from China, India and

elsewhere, bring some realism to the debate about climate change and other threats to public health and wellbeing from nature, to reinforce regional security against the threat of global terrorism and the other potentially destabilising forces of international criminality, and so on. Polity legitimacy, in turn, will go some way to consolidate public support, deepening the citizens' sense of identity with, membership of, a transnational European polity that is not a state but which nevertheless intrudes on their lives in critical aspects of public policy.

To meet these challenges, to accumulate the levels of public confidence and support needed to make and to enforce difficult policy decisions with distributive and redistributive consequences, and not least to have any realistic expectation of overcoming them, the EU must carry its citizens with it. This is why the constitutional endeavour, embedding the EU with polity legitimacy, remains a priority, notwithstanding the recent problems that befell the constitutional treaty in two national referendums. After all, it was this very concern with citizen disconnect that prompted the EU's political leaders to embark on the current search for a formal constitutional order more firmly rooted in public approval after a series of top-down treaty reforms that began at Maastricht had signally failed to settle thorny institutional issues and the 'competence competence' question of where authority lies in this complex multi-level polity.

As recent events confirm, this is no easy task. And so far the Union's would-be constitutional founding fathers have failed to impress, let alone to connect with the wider public. So how then to redress the problem of citizen disconnect? The key, as Skach sees it, is constitutional realism not over-reach, accommodating to circumstances, acknowledging the limits of what is practicable. As she points out, an EU Constitution will not create a European demos, nor bring about a European society, and neither will it create a framework for effective EU-wide democratic politics.[72] But at the practical level, and by taking due account of circumstances, the limits

of the EU constitutional endeavour, it can nevertheless contribute to the enhancement of performance legitimacy in EU governance in so far as it improves policy output, installing a clearer framework for collective decision-making, defining procedures and clarifying the allocation of competences between the various tiers levels of multi-level and still muddled governance.[73]

These may seem prosaic outcomes when measured against the yardstick of more ambitious federalist aspirations for a Union constitutional order. But the pay-off from even this modest constitutional prospectus measured in the valuable currency of increased legitimacy amongst EU citizens for the Union's political and constitutional order should not be discounted over the longer term. Legitimacy and the abiding public trust in the procedures if not the personnel of governance that is a direct outcome of political legitimacy accrues from performance as much as from merely abstract normative referents. What actually works matters as much as what idealists aspire to or theorists prescribe as 'good constitutional principles', and indeed acquires its own procedural legitimacy that enhances over time both regime and polity legitimacy. This, after all, was how legitimacy in national polities became embedded, a protracted, cumulate, and by no means an unproblematic process based on performance.

Performance remains key to enhancing the legitimacy of the EU polity. Citizens throughout the EU are becoming increasingly perturbed by rising international disorder from criminality to terrorism, health scares to climate change, population movements to threats to financial stability posed by unregulated activity in cyberspace. In short, the EU political elite must seriously engage with the public, launch a transnational conversation - necessarily a two-way and inclusive rather than a top-down and privileged process of communication - to both explain what the EU contributes to the European commonweal, the welfare of all, a realistic balance of costs as well as benefits, and to listen to public concerns, to hear what civil society has to say about its own priorities.

In these challenging times, the EU as a constitutional project presents an opportunity "to coordinate society against these other, potentially negative and disintegrating mechanisms that are emerging as potential alternatives. It is precisely for this reason that a European Constitution, formal and written, would serve Europe well....To the extent that the EU manages to achieve a constitution that serves as the main mechanism of social coordination in Europe, the disintegrating, centrifugal mechanisms of social coordination may have a smaller chance of taking root."[74]

This ambition may be some way removed from the grander aspirations of constitution-makers cast in the historic mould of the classic European constitutional tradition. But it takes constitutionalism in the EU beyond the earlier and unduly narrow preoccupation with rights endowed by the Court, it goes beyond the permissive consensus that put elite performance before public voice as the principal criteria of political legitimacy. It offers the best option if constitutionalism by stealth is to be replaced by a *pouvoir constituant*, bringing the wider public into the conversation about the EU's future direction, the only meaningful basis for European governance rooted in a democratic constitutional order. Above all, this is a feasible prospect, one that offers a solution to the Union's abiding constitutional deficit and a realistic way out of the present constitutional impasse.

Notes:

[1] G. Sartori, *Comparative Constitutional Engineering* London (1994), p.199

[2] See, for instance, M. Cappelletti, M. Seccombe and J. Weiler (eds), *Integration Through Law - Europe and the American Federal Experience* (New York, 1986); K. Lanaerts (ed), *Two Hundred Years of US Constitution and Thirty Years of EEC Treaty* (Brussels, 1988); and A. Stuttaford, Constitutionally Indisposed, *National Review*, February 22, 2005

[3] F. Llorente, Constitutionalism in the "Integrated" States of

Europe, Harvard Law school Jean Monnet Papers, http://www.jeanmonnet program.org/papers/98/98-5-html, p.7

[4] Ibid, p.7

[5] B. de Witte, Direct Effect, Supremacy and the Nature of the Legal Order, in P. Craig and G. de Burca (eds), *The Evolution of EU Law* (Oxford, 1999)

[6] See E. Stein, Lawyers, Judges and the making of a Transnational Constitution, *American Journal of International Law* (1981); K. Laenarts, Constitutionalism and the Many Faces of Federalism, *American Journal of Comparative Law* 38 (1990); G. Mancini, The Making of a Constitution for Europe, *Common Market Law Review* (1989)

[7] J. H. Weiler, The Reformation of European Constitutionalism, *Journal of Common Market Studies* 35 (1998), p.98

[8] Article F, paragraph 2 of the Treaty of the European Union

[9] Certainly novel but not entirely unique. For what Wiener has described as "emerging processes of constitutionalization beyond the state" are emerging in other transnational regimes, including the International Criminal Court, the United nations, the North American Free Trade Agreement, the World Trade Organization and the like. See A. Wiener, Evolving Norms of Constitutionalism in Europe: From 'Treaty Language' to 'Constitution'. Jean Monnet Working Paper 5/04, New York University Law School, 2004); N. Walker, The idea of Constitutional Pluralism, *The Modern Law Review* 65 (2002), p.322; and J. Shaw and A. Wiener, The Paradox of the European Polity, in M. Cowles and M. Smith (eds), *The State of the European Union 5: Risks, Reform and Revival* (Oxford, 2000), note 13

[10] E. Stein, Lawyers, Judges and the Making of a Transnational Constitution, *American Journal of International Law* 75 (1981)

[11] B. Guy Peters, Politics and Institutions of the EU, in A. Sbragia, op cit (1992), p.100

[12] Case 26/62 *Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1 and Case 294/83 *Parti Ecologiste 'Les Verts' v. European Parliament* (1986) ECR 1339

[13] J. Weiler, Does Europe Need a Constitution, *European Law Journal* 1 (1995)

[14] T. Hartley, *Constitutional Problems of the European Union* (Hart Publishing, 1999) at Chapter Two

[15] *Brunner* [1994] 1 CMLR 57

[16] See, for instance, the position of the German Federal Constitutional Court, *Internationale Handelsgesellschaft* [1974] 2 CMLR 549

[17] R. Bellamy and D. Castiglione, R.Bellamy and D.Castiglione, Democracy, Sovereignty and the Constitution of the European Union: The Republican Alternative to Liberalism, in Z. Bankowski and A. Scott, *The European Union and its Legal Order: The Legal Theory of European Integration* (2000), p.178

[18] Ibid, (2000), p.170

[19] Ibid, (2000), p. 176

[20] C. Joerges, Taking the Law Seriously: On Political Science and the Role of Law in the Process of European Integration, *European Law Journal* 2 (1996); and C. Joerges and J. Neyer, From intergovernmental bargaining to Deliberative Political Processes: the Constitutionalisation of Comitology, *European Law Journal* 3 (1997)

[21] R. Bellamy and D. Castiglione in Z. Bankowski and A. Z. Scott op cit (2000), p.177); see also *Internationale Handelsgesellschaft*, Case 4/73 *Nold v. Commission* [1974] ECR 503; and Case 374/87 *Orkem v. Commission* ECR [1989] ECR 3283

[22] P. Eleftheriadis, Begging the Constitutional Question, *Journal of Common Market Studies* 39 (1998)

[23] I. Maher, Community Law in the National Legal Order: A System Analysis, *Journal of Common Market Studies* 39 (1998)

[24] K. Armstrong, Legal Integration: Theorizing the Legal Dimension of European Integration, *Journal of Common Market Studies* 36 (1998)

[25] R. Bellamy and D. Castiglione in Bankowski and A. Scott op cit (2000), p.177

[26] Ibid (2000), p.177

[27] J. Weiler and M. Wind, *Rethinking European Constitutionalism* (Cambridge, 2003); P. Craig, The Nature of the Community: Integration, Democracy and Legitimacy, in P. Craig and G. De Burca op cit (1999); C. Lord, assessing democracy in a Contested Polity, *JCMS* 39 (2001); C. Lord and D. Beetham, Legitimizing the EU: is there a post-Parliamentary basis for its legitimation? *JCMS* 39 (2001)

[28] F. Llorente, op cit, http://www.jeanmonnet program.org/papers/98/98-5-html p.9

[29] Ibid.

[30] R. Hardin, *Liberalism, Constitutionalism and Democracy* (Oxford 1999)

[31] J. Elster, Ways of Constitution-Making, in A. Hodenius (ed), *Democracy's Victory and Crisis* (Cambridge, 1997)

[32] J. Fossum and H-J. Trenz, The EU's fledgling society: From deafening silence to critical voice in European constitution making, ARENA Centre for European Studies, University of OsloWorking Paper No.19, July 2005 at http://www.arena.uio.no

[33] D. Elazar, op cit, (Alabama, 1987), p.164

[34] M. Covell, European Union Constitution-making in Comparative Perspective, The Federal Trust, October 2003, p.2

[35] M. Everson, Beyond the *Bundverfassungsgericht*: On the Necessary Cunning of Constitutional Reasoning, in Z. Bankowski and A. Scott, op cit, (2000), p.92

[36] See L. Diez-Picazo, Treaty or Constitution? The Status of the Constitution for Europe, Jean Monnet Working Paper, 5/04, (New York University School of Law 2004)

[37] There is an extensive and growing literature on the issue of post-national constitutionalism. See, for instance, R. Dahl, Is Post-National Democracy possible?, in S. Fabbrini (ed), *Nation, Federalism and Democracy* (Rome, 2000); R. Dehousse, Un Nouveau constitutionalisme?, in R. Dehousse (ed), *Une Constitution pour l'Europe?*, (Paris, 2002); A. Stone Sweet, What is a Supranational Constitution, *Review of Politics* 56 (1994)

[38] D. Elazar, *Constitutionalizing Globalization: The postmodern*

Revival of Confederal arrangements (New York, 1998), p.3

[39] R. Watts, *Comparing Federal Systems* (Montreal,1999), p.1

[40] M. Covell, op cit (October 2003) p.2; see also, J. Hesse and V. Wright (eds), *Federalizing Europe? The Costs, Benefits and Preconditions of Federal Political Systems* (Oxford, 1995)

[41] A. V. Dicey, Home Rule from an English Point of View, *Contemporary Review*, July 1882

[42] D. Elazar, op cit, (Alabama, 1987), p.165

[43] L. Diez-Picazo, op cit (2004), p.9

[44] F. Palermo, op cit, (EURAC Research, Bolzano (2003), p.112

[45] F. Llorente, op cit, http://www.jeanmonnet program.org/papers/98/98-5-html, p.2

[46] Joscha Fischer, *From Confederacy to Federation: Thoughts on the Finality of European Integration*, speech delivered at the Humboldt University, Berlin May 2000, at http:// www.auswaertiges-amt.de

[47] *Special Eurobarometer*: *The Future Constitutional Treaty*, European Commission, March 2005

[48] A. Sajo, Constitutional Enthusiasm Towards the European Constitution? Jean Monnet Working Paper 5/04, pp.3-4

[49] J. Weiler, A Constitution for Europe? Some hard Choices, *Journal of Common Market Studies* 4 (2002), p.567

[50] M. Maduro, Where to Look for Legitimacy?, in E. O. Eriksen, J. E. Fossum and A. J. Menendez (eds), *Constitution Making and Democracy* ARENA Report No. 5 (Oslo, 2002), p.81 and p.91

[51] N. Walker, Europe's Constitutional Momentum and the Search for Political Legitimacy, Jean Monnet Working Paper 5/04 (New York University School of Law, 200 pp.52-3

[52] Convention on the Future of Europe, *Flash Eurobarometer*, 142 (EDS Gallup Europe, 2003)

[53] K. Laenarts and M. Desomer, New Models of Constitution-Making in Europe: The Quest for Legitimacy, *Common Market Law Review* 39 (2002)

[54] A. Sajo, Constitutional Enthusiasm Towards the European Constitution? Jean Monnet Working Paper 5/04, p.11

[55] A. Sajo, Constitutional Enthusiasm Towards the European Constitution? Jean Monnet Working Paper 5/04, p.12

[56] R. Kuper, op cit (Manchester, 2000), p.156

[57] R. Bellamy and D. Castiglione (eds), *Constitutionalism in Transformation. European Theoretical Perspectives* (special edition of *Political Studies* 44, 3 (1996)

[58] D. Judge, The failure of national parliaments, *West European Politics* 3 (1995)

[59] See the critique of American democracy in these terms in M. Sandel, *Democracy's Discontents. America in Search of a Public Philosophy* (Cambridge MA. 1996), pp.5-6

[60] R. Kuper, op cit (2000), p.159

[61] J. Habermas, Reply to Grimm, in P.Gowan and P.Anderson (eds), *The Question of Europe* (London, 1997), p.263

[62] Ibid (1997), p.262

[63] R. Kuper op cit (2000), p.164

[64] D. Held, Democracy and the new international order, in D. Archibugi and D. Held (eds), *Cosmopolitan Democracy* (Cambridge, 1995), p.106 and p.109

[65] N. MacCormick, Democracy, Subsidiarity, and Citizenship in the European Commonwealth, *Law and Philosophy* 16 (1997)

[66] Constitutional scepticism is a familiar refrain of those theorists who see the Union as merely a sophisticated international regulatory regime. See, for instance, F. Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford, 1999) and P. Schmitter, G. Majone and A. Moravcsik, Democracy and Constitutionalism in the European Union, *ECSA Review* vol.13 No.2 (2000)

[67] D. Beetham and C. Lord, Legitimacy and the European Union, in A. Weale and M. Nentwich (eds), *Political Theory and the European Union. Legitimacy, Constitutional Choice and Citizenship* (London, 1998), p.32

[68] R. Bellamy and D. Castiglione, Normative Theory and the European Union: Legitimising the Euro-Polity and its Regime, in L. Tragardth (ed), *After National Democracy: Rights, Law and Power in the*

New Europe (Oxford, 2005)

[69] See the argument in M. Maduro, How Constitutional Can the European Union Be? The Tension Between Intergovernmentalism and Constitutionalism in the European Union, Jean Monnet Working Paper 5/04, New York University School of Law, 2004)

[70] L. Dobson, op cit (2000), pp.9-10

[71] R. Hirschl, Hegemonic Preservation in Action? Assessing the Political Origins of the EU Constitution, Jean Monnet Working Paper 5/04, New York University School of Law, 2004), p.8

[72] C. Skach, We the Peoples? Constitutionalizing the European Union, *Journal of Common Market Studies*, 43 91) 2005, p.157

[73] I. Pernice, Multilevel Constitutionalism in the European Union, *European Law Review,* (2002); I. Pernice and R. Kanitz, Fundamental Rights and Multilevel Constitutionalism in Europe, Walter Hallstein Institut Paper 7/04, March, 2004

[74] C. Skach, op cit, 2005, p.157

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

IMMIGRATION OF SERBIA AND MONTENEGRO CITIZENS IN THE EUROPEAN COUNTRIES

Marko Nikolić, MA[*]

Abstract

In the Context of Priority for accelerated integration into the European Union which has been proclaimed by the State Union of Serbia and Montenegro (SaM), as weel as the fact that it is still out of the European integration process, for the Author of this Paper it was particularly interesting to understand the position of its citizens in some EU member states. That effort was limitted by the lack of the latest literature from that domain in SaM. Concerning Methodological approach, the Description, and Statistical and Comparative Analysis dominate in the Paper.

The Article »Imigration of Serbia and Montenegro Citizens in the European Countries« presents in its First Chapter an Overview of Immigration Policy developement in these Countries and their basic characteristics. The Second and Third Chapter have the objective to set out the basic characteristics of Yugoslav foreign migrations in the second part of the XX Century and emphasize »brain drain« as its focal point. The Position of SaM Citizens in Germany, Austria and France is analysed in the Forth Chapter, with particular retrospective view on present Immigration Policies of these Countries. The Conclusion is the Final part of the Paper.

[*] Marko Nikolic, Research Assistant, the Institute of the International politics and Economics, Belgrade.

Immigration Policy of West European Countries

Thanks to the dominant merkantilist approach the movement of economically active population in Europe had become the subject of the economic policy in the 18th century. At that time the pursuers of the economic policy had considered that growth of the monetary mass and population created the preconditions for economic development. That conception had led to the fact that »migration policy« of big countries had enabled the free imports of foreign workers, but not foreign goods. The exports of domestic products had been their economic priority.[1]

In the 19th century, thanks to the supremacy of liberal approaches, the barriers inherited from the merkantilist period had been removed. But the great economic crisis between the two World Wars had caused retreival to protection of the domestic markets. Among others, for the first time serious measures had been introduced to control immigration even in the biggest immigration countries.[2]

After the Second World War labour demand had been present in West European Countries, particulary in the sector of »dirty jobs«. Bearing in mind the absence of domestic workers who took interest in them, the labour had been imported from undeveloped countries. For that purpose even the legal framework had been adapted on the international level. For example, the Migration for Employment Convention (No.66)[3] had been verified in 1949 and built into the documents of the International Labour Organization. The countries of the Brussels Agreement which had created the West European Union (France, Luxemburg, Holland, Belgium and Great Britain) guaranteed by their joint 1950 Convention all rights to foreigners in

---

[1] W.R. Bohning, *International Migration and the International Economic Order,* »Journal of International Affairs«, No.2, Vol.33, 1979, pp.186-189.

[2] Prof. Vladimir Grečić, *Migracija i integracija stranog stanovništva,* Institute of the International Politics and Economics, Belgrade, 1989, p.12.

[3] Internet, www.sela.org/public_html/AA2K2/eng/docs/coop/migra/spsmirdi2-02/spsmirdi2-3.htm, 01/06/2004 .

case of unemployment.[4] Also, the Nordic Countries had created the Common Labour Market in 1954, guaranteing the social insurance to foreign workers.

By signing the 1957 Convention in Rome, Italy, France, Western Germany, Holland and Luxemburg agreeed on a large number of issues concerning the social insurance. On those bases they had adopted the Directive on Social Insurance of Foreign Workers[5] in 1958, which was the pillar for their future migration policy within the Rome Treaty.[6] Its Articles 48, 49 and 51 had enabled free movement of workers within the European Community. Meanwhile, those Articles had not been implemented till the 1964 Directive was adopted[7]. It regulated free movement of migrants, their rights and obligations in immigration countries, and also the rights of member states to import workers from the third countries for jobs which were unpopular with domestic workers.[8]

However, European Economic Community (EEC) had finally created the Common Labour Market by adopting the Directive No.1612[9] in 1968, achieving full internal free movement of people for employment purposes. According to this Directive citizens of member countries were given priority over the colleagues from the non-Community countries. In fact, this attitude emerged from that time closing-oriented policy of the European countries towards the foreign workers, which had been caused by the global economic crises that started in early 1970s.

---

[4] ILO, *Social Security for Migrant Workers,* Geneva 1977, p.12.

[5] *1958 EEC Directive about Social Insurance of Migrant Workers,* Internet, 02/06/2004, www.europa.eu.int/factsheets/4_8_4 en.htm.

[6] Prof. Vladimir Grečić, *Migracija i integracija stranog stanovništva,* Institute of the International Politics and economics, Belgrade, 1989, p.16.

[7] All the texts of Directives concerning the social status of foreign workers in the former European Economic Community (EEC) can be found on the Site www.ttc.Iv/index.php?id=72&dirid=152 .

[8] Grečić, *nav. delo*, str.14 -15.

[9] Possible to be seen on the mentioned Site www.ttc.Iv/index.php?id=72&dirid=152.

Only the 1987 Single European Act (SEA) had finally removed all the barriers creating the common immigration policy of the EC members. This document was particulary focused on the area of labour market, this primarily being in the sphere of the national legislation of EC member states. At that time the European Commission had recommended in its »White Book« over 300 measures to be adopted with the aim of harmonizing the national regulations in almost all areas. This also included the common policy in the area of immigration and labour market.

The full harmonization of the common migration policy was completed by the Maastricht Treaty in 1992 that created the European Union. This policy has been characterized by the »qualitative approach« or imports of Highly Qualified Workers exclusively.

The basic Characteristics of Yugoslav Foreign Migrations

The Yugoslav Area had been characterisized by the Economic Migration to the developed Western European and Overseas Countries between the two World Wars. After the Second World War aproximatelly 200.000 Yugoslav Citizens were placed in the Western European Countries. Many of them moved to Overseas Countries as refugees (85.000 in the USA, 30.000 in Canada, 23.000 in Australia, 15.000 in Argentina, ect.).[10]

But the economic growth in Western European Countries during the early 60s of the 20th Century increased the demand for Labour. Because of that they became immigration countries. About 40.000 Yugoslav Citizens were settled in these Countries in that moment.[11] The emigration from Yugoslavia was additionaly

---

[10] I. Čizmić, *Doseljavanje, struktura i položaj naših iseljenika u prekomorskim zemljama*, Paper 5, Zagreb, 1976, pp. 25-26.

[11] Vladimir Grečić, *Jugoslovenske spoljne migracije,* Federal Ministry for Work, Health and Social Policy, Institute of the International Politics and Economics, Federal Institution for Labour Market and Migrations, Belgrade, 1998, p. 46.

motivated both by positive approach of the Yugoslav State and the big gap in salaries in the Country and abroad. Also, numerous bareers for employment and the need for quicker afirmation led large number of Highly Qualified Workers to decide to leave the Country. Finally, migrations from former Socialist Federal Republic of Yugoslavia (SFRY) had the regional characteristic thanks to the big gap in economic developement between some regions (Lika, Kordun, Dalmacija, Hercegovina, Montenegro and some parts of Serbia) which motivated the drain of population from undeveloped areas.

The number of Yugoslav workers in Western Europe has been growing untill the end of 1973, finally achieved the total population of 1.150.000 people.[12] Their main destinations were Western Germany, Austria, France, Switserland and Sweeden. For example, the Yugoslav citizens already made the largest group of foreign workers in Austria in that time.[13] Parallely, immigration from Yugoslavia to the USA, Australia and Canada started to increase.

The Recesion and growth of unemployment reduced the demand for Labour in the Western European Countries in 1973/74. As a result, these countries resorted to reduce the number of already employed foreigners with new immigration policy. It was characterisezed by selective integration of foreign workers, with particular attention on integration of their children or »second generation«. Generaly, the total number of migrant workers in the European Countries was reduced from 8,2 to 6,6 million people in the period between 1973/79. The number of Yugoslav workers was not radicaly changed, but followed by larger participation of family members in their total number.[14]

---

[12] *Neka aktuelna pitanja zapošljavanja, rada i boravka građana u Evropi,* Federal Committee for Work, Health and Social Protection, Belgrade, 1982.

[13] V. Grečić, *Jugoslovenske spoljne migracije,* Federal Ministry for Work, Health and Social Policy, Institute of the International Politics and Economics, Federal Institution for Labour Market and Migrations, Belgrade, 1998, p.47.

[14] Ibidem, p.48.

Thanks to the Tehnological Revolution during the middle 80s of the 20th Century, developed countries removed their industry production into the countries which posessed cheap Labour. Being particullary focused on Goods and Services based on knowledge, developed countries logicaly had the less demand for Unqualified Labour having imported exclusively Highly Qualified Workers (Scientists and Researchers). On the other side, the Crisis in SFRY stimulated young and educated people to immigrate. Despite official emargo for employment of foreigners in Western Europe in that period, almost 30.000 workers from former Yugoslavia were employed in Switserland, Austria and France each year, being activlly mediated by Yugoslav official Institutions.[15]

The new Crisis in Western Europe Economy and radical changes in former Socialist Countries during the 90s widely caused the stronger Embargo for immigration into the Developed Countries. In 1992 the biggest immigration countries (Western Germany, Austria and France) introduced the large scale of Regulations aiming to cut down time-limit fo Work Permits on one year, expell illegal immigrants, and enable already integrated foreign workers to get the Citizenship.[16] Restrictive measures were particullarly directed to Yugoslav citizens in European States in that time thanks to the UN Security Council sanctions being introduced for Federal Republic of Yugoslavia (FRY).

The deep Crisis in FRY during the 90s motivated its Citezens to decide to leave the Country. Developed Western European Countries were looking exclusively for young experts from less developed countries in that period. The largest number of emigrants from FRY in the last decade of the 20th Century moved themselves to Germany (732.000 people), Switserland (194.000), Austria (77.000) and Italy, presenting 10% of the foreign population in case of

[15] Ibidem, p.50.

[16] Ibidem, p.52.

Germany, 5% in case of Italy, and even 14% and 32% in case of Switserland and Austria.[17]

Unfavourable Social and Economic clime in Serbia and Montenegro at the beginning of the 21st Century has also been constantly motivating the aspiration to immigrate.

"Brain Drain"

Both all Socialist Countries and Yugoslavia have been characterisized by the intensive immigration of Highly Qualified Persons or »*brain drain*« during the 90s. The percentage of these type of workers even started to increase in the total number of emigrants in the middle 80s, overcoming a quater in the early 90s.[18] »Brain drain« was additionaly accelerated by sanctions against FRY. Even before war conflicts almost 250 top experts have been leaving the teritory of FRY each year going to the Overseas Countries.[19] Its a general evaluation that almost 30.000 highly educated people left Serbia and Montenegro in last 25 years, and more than 50 of them could be ranked as top experts.[20]

Based on the Research being led by Institute of the International Politics and Economics in Belgrade and Serbian Ministery for Science and Tehnology during 1993, 1994 and 1995, almost 1.300 reserchers went abroad in the period between 1979-1994 (the most of them were graduated students and PhD researchers from the natural sciences), previously being employed in Scientific

---

[17] Ibidem.

[18] Vladimir Grečić, Đuro Kutlača, Vlastimir Matejić, Obrad Mikić, *Migracije visokostručnih kadrova i naučnika iz SR Jugoslavije*, Institute of the International Politics and Economics and Ministery for Developement, Science and Environment, Belgrade, 1996, p.32.

[19] *OECD in Figures 1994*, the OECD Observer, Paris 1994.

[20] Vladimir Grečić, Đuro Kutlača, Vlastimir Matejić, Obrad Mikić, *Migracije visokostručnih kadrova i naučnika iz SR Jugoslavije*, Institute of the International Politics and Economics and Ministery for Developement, Science and Environment, Belgrade, 1996, p.33.

Research Centers.[21] Great Britain, Germany, Switserland and Italy were main destinations for these persons in Europe, taking 17% of the total number of Highly Qualified emigrants moved from FRY area (Serbia and Montenegro). The average age of these persons was less than 40 years. These figures present the great loss Country was faced with in the close past.

The Position of Serbia and Montenegro Citizens in Western European Countries

The position of immigrants from former FRY and present Serbia and Montenegro in the European Union at the moment is defined by these Countries immigration policies. That position is related to social, cultural and political rights. In despite of equality for every man formaly proclaimed by all international agreements, no matter where he is located, membership of states in some Organisations essentialy influences in practice on the position of migrant workers. It is best to be seen in examples of the European Union and Council of Europe where non-member states citizens do not possess guarantees even for many existential rights.

The legislation of European Countries where the most Serbia and Montenegro citizens live and work prohibits discrimination based on belief, race, gender or nationality. But in practice, all of them start from the apsolute priority in employing domestic workers or citizens of mentioned integrations countries. This approach is pretty visible within the division of jobs »for domestic workers« and »for foreigners«. »Unwished jobs« are mostly offered to foreigners. Also, in the conditions of increasing unemployment, foreign workers are first in line to loose the job. More favourable position is always benefited by qualified workers.

Foreign worker must possess the Permission to Stay and Permission for Work in all European Countries even to get job. Those pre-conditions are closely linked in practice and loosing one causes

---

[21] Ibidem, p.34.

loosing the other. The permission for work (which is temporarily issued) exlusively connects worker with one type of job. That means that his stay in Country is conditioned by occupying with already anticipated job. In fact, foreign worker has no capacity to change it voluntarily. Some of the acception countries also make impossible or condition the arrival of immigrants families, looking for particular permissions which prove that persons are married, employed in the country, having regular salary or even possessing accomodation.[22]

Children of migrant workers also have particular status in some European Countries. They are faced with large number of limitations in getting higher education which later determine position in employment and working process. It seems that those children are pre-determined in some way to inherit the social positions and jobs of their parents.

Many problems also exist in area of social insurance of foreign workers in these countries. Namely, the social status is often conditioned by Domicil, and leaving the acception country usually leeds to interruption of possibility to use the rights benefited from working process. It is also very important to mention foreign workers are faced in many cases with problems related to the transfer of money in the countries of origin.[23] All these troubles have been guessing Serbia and Montenegro Citizens employed throughout Europe.

A - Germany

As the most economicaly developed European Country Germany has always been particularly attractive for migrants from Serbia and Montenegro. The most of them are precisely based in this country.

Having in mind that German Developement Strategy is based on Information Techologies (IT), this Country has the biggest

[22] Ibidem, p.87.

[23] Ibidem, p.89.

demand for experts from this area. Domestic ones cover only 75% of demand which led the German Government to introduce the new Programme in summer 2000 aiming to attract the IT experts to come to Germany mainly from countries not belonging to the EU. Because of that Germany has been issueing almost 75.000 working permits each year (*German Green Card*) for this profile of workers.[24]

In August 2001 Germany adapted legislation to its demand for Highly Qualified Labour (particualarly the mentioned one from the IT area), paralely disencouraging Unqualified Workers to come. For that purpose permits of stay for top experts have even been issued in cases without concrete job offer. The same thing concerns on automatic Acquisition of one year permit of stay for ending years students in German Universities and obliged passing the Courses of integration for new migrants.[25] The present German Immigration Policy is also characterisized by all these measures.

B - Austria

Immigration in Austria is usually connected with temporarly workers or refugees. Its largest foreign population consists of citizens from five Republics of Former Yugoslavia. They present 4,2% of the Country's total population and almost the half (46%) of population without Austrian Citizenship.[26]

During the 60s Austria had signed bilateral agreements with many countries aiming to improve the status of temporarly foreign Labour, also with former Yugoslavia in 1966. Immigration in this Country has been doubled in the period between 1987-1994 (from 326.000 to 713.000 people) causing the introducing the System of

[24] *Introduction to Immigration in Germany,* Internet, www.workpermit.com/germany/employer1.htm, 15/06/2004.

[25] *Germany to liberalize Immigration,* Internet, www.workpermit.com/new/germany, 17/06/2004.

[26] *Immigration in Austria – Mapping Minorities and their Media: The National Context-Austria,* Scientific Work, Internet, www.lse.ac.uk/collections/EMETEL/Minorities/papers/austriareport.pdf

Quotas for immigrants and new Asil Law in 1992. Those measures importantly reduced total number of immigrants in Austria.

Thanks to its geographical position and nearness to conflict areas in the Balkans, Austria became the acception country for refugees during the 90s. Only during the conflict in Bosnia (1992-1995) almost 50.000 people found the protection in this Country, followed by additional 20.000 people during the Kosovo War in 1999.

The present Austrian Immigration Policy is mainly focused on humanitarian and social Aspect (inspired by some Scandinavian Countries), primary trying to improve the social status of national minorities including their cultural developement. In that sense today' s Serbian national minority in this Country has medias in its own language, like monthly Magazine *Bečki informator*, Radio Stations *Jugoton Wien* and *Naša mala ulica*, and also 16 Television Satelite Chanals.[27]

C - France

Like in case of Germany, the deficit of experts in the IT area in France made its traditionaly restrictive immigration policy more alleviated. The inflow of Qualified Labour has been facilitated. In despite of that, French Labour Market is still considered the most protected in Europe. All working permits in this Country are issued in Local Departments for Work and Employment (Departement du Travail, de L'Emploi et de la Formation Professionale - DDTEFP) based on the procedure being different from town to town.

Two Types of Working Permits exist in France – *Temporarly* and *Full* one.[28] For example, temporarly can be related to the workers of Company which is not French but has the interest to employ them in France. These permits are issued for 18 months with possibility to prolong the validity for term equal to duration of employment

[27] Ibidem.

[28] *Introduction to Immigration in France,* Internet, www.workpermit.com/france/france.htm, 13/06/2004.

agreement.[29] On the other side, the Full working permit has been issued by the French Company which need to employ foreigner in France. It is not temporarly limited. Its imporatant to mention that French Companies particulary take into consideration next 3 criterias during the employment competition – the amount of salary, the educational level of candidate, as well as professional importance of candidate's position.[30]

Conclusion

The position of Serbia and Montenegro Citizens in the European Countries is only a small aspect of complex issue of migrations in Europe. It is not possible to be understood well without taking into consideration the present economical and political situation both in the EU and International Relations and the real position of Union of Serbia and Montenegro in International Community. In the circumstances of much bigger offer than demand for Labour and constantly present uncertainty even for domestic workers, it can be said that the real social pre-conditions and needs for better status and position of migrant workers do not exist in the biggest immigration countries in Europe at this moment.

Having in mind the fact that Serbia and Montenegro is still out of the most important European integrations, the position of its Citizens in their member countries can be defined as *uncertain*. It is possible to say that it will mostly depend of future country position in International Community, particularly of the EU Policy directed to it. Untill the status of the Union of Serbia and Montenegro to be defined towards its potential membership in the EU, its Citizens will still possess the status of the »Second Class Citizens« in many segments of social life in the European Countries.

---

[29] Ibidem.

[30] Ibidem.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

THE MERITS AND LIMITS OF SOCIO-CONSTRUCTIVISM IN EXPLAINING THE PROCESS OF EASTERN ENLARGEMENT OF THE EUROPEAN UNION

Georgiana Ciceo*

Abstract

This paper will focus on the second category of enlargement studies. On the one hand, this research aims at testing socio-constructivism on the case of Eastern enlargement. On the other hand, this paper takes into consideration the certain preference for socio-constructivism as a theoretical framework for explaining the last round of enlargement of the European Union and tries to explain the appeal socio-constructivism has exerted on the researchers on enlargement.

An overview of the literature on international relations and European studies with respect to the process of Eastern enlargement of the European Union tend to enforce the observation made by Philippe C. Schmitter namely that "the enlargement process has been taking place in a theoretical vacuum"[1] in the sense that enlargement has largely remained outside the corpus of theoretical writing on integration.

Although enlargement only gradually made its way to the top of the EU agenda, a certain literature on enlargement already exists and this has largely developed on two dimensions: descriptive studies completely atheoretical that aim at evaluating the potential impact of the enlargement and studies applying existing theories of

---

* Georgiana Ciceo is Lecturer at the Faculty of European Studies, Babeş-Bolyai University Cluj.

[1] Philippe C. Schmitter (1996) "Imaging the Future Euro-Polity with the Help of Past Theories" in: Garry Marks, et.al. *Governance in the European Union* (London: Sage), pp. 1-15.

integration on the case of enlargement. However, despite certain attempts to structure the present discussion on enlargement (see for instance the articles of Frank Schimmelfennig[2] and of Frank Schimmelfennig and Ulrich Sedelmeier[3]) all contributions tend to look at a rather small set of agents, causal factors and boundary conditions for explaining the outcomes. This paper will focus on the second category of enlargement studies. On the one hand, this research aims at testing socio-constructivism on the case of Eastern enlargement. On the other hand, this paper takes into consideration the certain preference for socio-constructivism as a theoretical framework for explaining the last round of enlargement of the European Union and tries to explain the appeal socio-constructivism has exerted on the researchers on enlargement. However, this is not an easy exercise due to the fact that the process of enlargement is according to Frank Schimmelfennig very much like a "puzzle characterized in its early stages by the rational pursuit of perceived interests of EU member-states that ended up in a normatively determined outcome."[4]

The research questions that this paper aims at answering would be: Should the process of Eastern enlargement be viewed as a purely learning/socialization process based on ideational factors in which material factors inspired by cost-benefit calculations which are the key variables of the rationalist studies can be left aside? What are the most important actors and their reasons? What is the role of endogenous factors? For the purpose of this article enlargement will be regarded as a process of gradual and formal horizontal

---

[2] Frank Schimmelfennig (1999) "The Double Puzzle of EU Enlargement: Liberal Norms, Rhetorical Action, and the Decision to Expand to the East" in: *ARENA*, Working Paper 99/15 (Oslo: Universitetet I Oslo).

[3] Frank Schimmelfennig and Ulrich Sedelmeier (2002) "Theorizing EU enlargement: research focus, hypotheses, and the state of the research" in: *Journal of European Public Policy* 9(4), pp. 500-528.

[4] Frank Schimmelfennig, *art. cit.*, p.2.

institutionalization of organizational rules and norms as proposed by Schimmelfennig and Sedelmeier[5].

In contrast with rationalists theories of European integration which offer a material understanding of the world, socio-constructivism attempts to offer a constitutive view of the world. The key concepts with which the socio-constructivists operate are the actors who acquire identities through their participation to „collective meanings" and the structures which by being created through interactions from stable ensembles of identities and interests acquire they themselves new identities and interests. According to Alexander Wendt the structures of international life are primarily ideational and not exclusively material, whereas the shared meanings between purposive state actors determine identities and interests in the international system (institutions are based on collective meanings)[6]. As such this framework of study is centered on the interaction among states whose identities and interests are influnced by transnational relations and interdependence.

The socio-constructivist studies on European integration were often criticized for not paying sufficient attention to external factors, for not not taking into consideration the specific organizational framework which may affect the development of a community identity (it is more probable that states will develop a common identity within the framework of the European Union rather than through interactions in a multitude of international structures) and, last but not least, for the fact that „there is no such thing as a single socio-constructivist approach or theory" as Steve Smith[7] puts it when refering to the wide span of the socio-constructivist studies ranging between a minimum, a so-called „moderate" constructivism, that tends to favor rationalist-deductive explanations and a maximum, a

[5] Frank Schimmelfennig and Ulrich Sedelmeier, *art. cit.*, pg.

[6] Alexander Wendt (1987) "The Agent-Structure Problem in International Relations Theory" in: *International Organization* 41(3), pp. 335-370.

[7] Steve Smith (1999) "Social constructivism and European Studies: a reflectivist critique" in: *Journal of European Public Policy* 6(4), p. 682.

so-called „radical" constructivism, that tends to favor a normative understanding of intersubjective meanings and relationships with the result of offering only a looser framework for understanding. Another problem generated by this theoretical approach is connected with the fact that rather than seeking to theorize the precise socialization process that gives rise to new actor preferences, and thereby to predict the conditions under which such processes will be influential in world politics, they take for granted the results of socialization on social preferences and focus almost exclussively on explaining the role of ideas in foreign-policy making[8]. However, despite all its critics, despite the fact that its concepts, theories and methods are not yet as developed as it is the case for its rationalist counterparts, socio-constructivism is still regarded as a powerful theoretical approach for the study of European integration[9].

Socio-constructivism proved its usefulness in explaining Eastern enlargement in two respects: in explaining how European Union arrived finally to the decision to enlarge itself[10] and in accounting for the process of social interaction that the enlargement implies.

Explaining European Union's decision to enlarge itself towards Central and Eastern Europe

During the Cold War the idea of Europe came to be closely associated with the European institutions[11]. A number of norms

[8] Jeffrey T. Checkel and Andrew Morawcsik (2001) "Forum Section – A Constructivist Research Program in EU Studies?" in: *European Union Politics* 2(2), p. 227.

[9] Markus Jachtenfuchs (2002) "Deepening and widening of the integration theory" in: *Journal of European Public Policy* 9(4), p. 654.

[10] See Ulrich Sedelmeier (2000) "Eastern Enlargement: Risk, Rationality, and Role-Compliance" in: Maria Green Cowles and Michael Smith (ed.) *The State of the European Union: Risks, Reform, Resistance, and Revival* (Oxford: Oxford University Press), pg. 163-185.

[11] Alexandru Dutu (1999) *Ideea de Europa si evolutia constiintei europene* (Bucuresti: All Istoric), pp. 114-53, 237-250.

connected in a way or another with the ideal of liberal democracy deeply embedded in the domestic structures of the member states came to define EU's identity. However, from the very beginning the European Community/Union was not conceived as a construction with a fixed geometry. According to Article 237 TEC/Article O TEU, the door is left to all European states. The underlying understanding would be that only states sharing the same set of norms and values may be taken into consideration.

During the Cold War a number of statements of policy-makers from the member states governments or European institutions while deploring the division of the continent and the absence of CEE states from the European project, asserted that, without them, the project remain incomplete. In the face of the events of 1989, the European Community decided to assume a leading role in relation to the CEE states. This idea was best expressed in the Declaration of the European Council held in Strasbourg in December 1989: „the Community remains the foundation of a new European architecture". A sense of moral responsability seemed to prevail in the highly emotional atmosphere of the beginning of the '90s, only to be reinforced in the years to come. Previously enlargements have set a precedent for a special EU role in supporting democratic consolidation and market economic reforms, thus playing a leading role in the stabilization of countries like Greece, Spain or Portugal. This stabilization card was played hard especially on the side of CEE states when lobbying for their admission into the European Union. In addition to the stabilization rhetoric, CEE countries insisted on the idea of their „return to Europe" which from a rationalist perspective may sound as a hollow construction for advancing the cause of EU membership, but from a socio-constructivist perspective involved a natural right to accession based on moral arguments in favor of the enlargement. Finally, the insistence of the CEE states on the need for an active role of the European Union in stabilizing the region and on the idea of their return to Europe managed to reinforce the sentiment of moral responsability vis-à-vis the CEE states on the side of

European Union, probably best expressed by Joschka Fischer[12] when saying that enlargement is not just a supreme national interest of Germany, but a moral obligation due to the fact that „following the collapse of Soviet Union the EU had to open to the East otherwise the very idea of European integration would have undermined itself and eventually self-destructed"[13].

Throughout the mid 1990's growing concern about the direction of EU policy towards CEE countries manifested itself on a regular basis until reaching a point where enlargement became irreversible. By then the most outstanding problems of the early years of the '90s had been settled: the reunification of Germnay, the ratification of the Maastricht Treaty and the fate of the financial deal proposed by Jacques Delors. At the same time the deteriorating security environment of the Central and Eastern European region triggered increased pressures from these states on the European Union and NATO as well. The decision however was not an easy one and made necessary a compromise between the supporters (Germany, Great Britain and Denmark) and sceptics (France, Spain and Portugal) of a possible Eastern enlargement as a solution to the stabilization of the region. The deal was two-folded. On the one hand it included a set of criteria that were to be fulfilled by the CEE states prior to their admission as well as French Prime Minister Edouard Balladur's idea of a Stability Pact for Central and Eastern Europe both aimed at making sure that the enlargement would not undermine the momentum of the integration process. On the other hand the EU member states agreed upon building their own capacity for absorbing a still to be defined number of CEE states. The decision to enlarge was afterwards enforced over the following EU summits: Essen – 1994, Cannes and Madrid – 1995, Luxemburg - 1997.

---

[12] Joschka Fischer (2000) "From Confederacy to Federation – Thoughts on the Finality of European Integration". Speech on 12 May 2001 at Humboldt University Berlin, at <http://www.auswaertiges-amt.de/8_suche/index.htm>>.
[13] ibid.

The decision on Eastern enlargement was favoured by the gradual development of idea of „shared values" understood not only as collective identity constructions about Europe, but at the same time as common cultural traditions and historical experiences, common development of distinct Western constitutional and political principles, a definite sense about what constitutes Europe's „others" that started to forge their way and to shape the discussion on Eastern enlargement. This „shared values" paved the way to the criteria laid down at Copenhagen seen as a precondition for embarking on the process of accession, whereas the *acquis* came to provide the normative basis for this latest round of enlargement. The criteria bear the imprint of the shared foundation of the European culture and Western christianity. They proceed from the assumption that liberal human rights are the fundamental values of this community. In the domestic sphere they are translated in a social and political order based on social pluralism, the rule of law, democratic political participation and representation as well as private property and a market based economy. As for the *acquis* this forms the normative framework of this regional community.

Explaining the process of social interaction between the EU member and candidate states

As there is practically an almost universal agreement among European politicians and also academics that enlargement will not only determine the future of the CEE states, but at the same time what kind of European Union will emerge[14] another interesting facet of the study of enlargement from a constructivist perspective lies in the analysis of the interaction between accession countries and the EU as constructivists consider that international interactions take place in an institutional environment and that the social values and norms that constitute this environment shape the outcome of these

[14] Lykke Friis and Anna Murphy (1999) "The European Union and Central and Eastern Europe: Governance and Boundaries" in: *Journal of Common Market Studies* 37(2), p. 212.

interactions. For a general framework of this type of analysis see the studies of Jeffrey T. Checkel[15]. They aim at explaining how the attitude towards enlargement developed from the beginning of '90s to the end of the century – from avoiding the issue of enlargement to gradually accepting it on the price of its own embarkment on a dificult process of internal reform. It was not only the preparedness of the candidate countries (their accession capacity) that mattered for the enlargement. Also the absorption or extension capacity of the EU turned to be an essential precondition for this process, as EU became increasingly aware that it lacks the institutional infrastructure for accomodating the CEE countries[16]. It was obvious from the very beginning that the reforms would have to include the whole European construction – from institutions to finance, agricultural policy and structural funds. CEE states played thus even before their full accession a central role in any political calculations on the future shape of the Union. They were in the background of all the difficult negotiations that took place on the occasion of the Intergovernmental Conferences from Amsterdam (1997) and Nizza (2000) or of any bargain on Agenda 2000 or of the discussions on the future Constitution of the European Union.

After the end of the Cold War the CEE states embarked themselves on a process of transformation of their communist regimes and rigid command economies in democratic pluralistic regimes with market economies. As the idea of enlargement gained momentum the two processes - the regime transformation and advancing towards full-EU membership – became increasingly not just simply parallel, but deeply interconnected developments. They

---

[15] Jeffrey T. Checkel (2000) "Compliance and Conditionality" in: *ARENA*, Working Paper 00/18 (Oslo: Universitetet i Oslo) and Jeffrey T. Checkel (1999) "Why Comply? Constructivism, Social Norms and the Study of International Institutions" in: *ARENA*, Working Paper 99/24 (Oslo: Universitetet i Oslo).

[16] Georg Voruba (2003) "The enlargement crisis of the European Union: limits of the dialectics of integration and expansion" in: *Journal of European Social Policy* 13(1), p. 45.

came to be so intricately linked that they depended on each other and even more they fed each other[17]. The reform process of the Central and Eastern European countries has taken thus a particular form due to the foreign policy decision they made in favor of accession to the EU and the necessity to meet the Copenhagen criteria.

Accession to the EU by new members has generally been also part of a broader process of Europeanization[18] that went hand in hand with the process of domestic adjustment. It is widely acknowledged that European integration alters the process of domestic politics within individual countries leading to a convergence of politics of member states. By Europeanization it was usually understood a two-way interaction between the „national" and the „European", with Member States assuming the role of both contributors and products of European integration[19]. This Europeanization – it is convetionally assumed - is especially pronounced in countries that are already member states of the European Union. However, a process of Europeanization takes place already when the candidate countries start to incorporate the *acquis* into their own legislation[20]. This pressure coming from Brussels is met in the candidate countries by a process of domestic adjustment. These two processes not only preced accession, but also follow it.

[17] Walter Matli and Thomas Plümper (2004) "The Internal Value of External Options – How the EU Shapes the Scope of Regulatory Reforms in Transition Countries" in: *European Union Politics* 5(3), pp. 307-8.

[18] Helen Wallace (2000) "EU Enlargement: A Neglected Subject" in: Maria Green Cowles and Michael Smith (ed.) *The State of the European Union: Risks, Reform, Resistance, and Revival* (Oxford: Oxford University Press), p. 163.

[19] Dimitris Papadimitriou and David Phinnemore (2004) "Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform" in: *Journal of Common Market Studies* 42(3), p. 621.

[20] Geoffrey Pridham (2002) "Enlargement and Consolidating Democracy in Post-Communist States – Formality and Reality" in: *Journal of Common Market Studies* 40(3), pp. 953-5.

European Union proved to be a powerful magnet shaping the aspirations of candidate countries[21]. As far as the CEE states are concerned the enlargement set in motion a very complex and profound set of adjustment processes with the aim of socializing applicant countries into the dominant mores and values of the EU thus enabling them to achieve 'democracy by convergence'. In order to accurately evaluate these processes EU has developed a policy of „democratic conditionality"[22]. This conditionality tool sets hurdles in the accession process of the CEE countries. The underlying idea would be to induce them to comply with specific standards. These hurdles originate in the Copenhagen criteria that were further elaborated on in the European Commission's *avis* of 1997 and from 1998 in the annual regular reports on candidate countries. They were also tied with EU programms of financial assistance, the accession partnerships, twinning for the secondment of pre-accession advisers from the Member States' civil services to the applicant countries with the task of importing know-how on the implementation of the *acquis* to national and local administrations and the whole pre-accession strategy. They might be regarded as part of the „democratic conditionality" strategy according to which the compliance with the standards imposed at Copenhagen is rewarded with assistance and institutional ties. As gaining international approval is an important way of legitimizing political choices in the post-communist context, the conditionality tool proved to be a very powerful one in determining the CEE states to embrace the European values. EU has used this tool in different ways: timing the accession process (starting of negotiations, determining the date of full accession), ranking the applicant's overall progress, benchmarking in specific policy areas, providing examples of best practice, assesing the

---

[21] Helen Wallace, *op.cit.*, p. 151.

[22] See also Geoffrey Pridham, *art.cit.*, pp. 953-973.

applicant's administrative capacity and institutional ability to implement and enforce the *acquis*[23].

What is still very debatable from this perspective is the extent to which the EU is able to impact on the CEE states reform. Its efficacy depends however on the domestic political costs of compliance, on governmental cost-benefit calculations[24]. It is considered that there are several factors that limit the influence of the EU: the absence of clear yardsticks to measure progress as the requirements that CEE states have to fulfill are complex and difficult to quantify and the interaction between Europeanization and other processes of change driven externally by other international institutions (IMF, World Bank) and internally by different social forces[25]. This raises the fear that the imperfect shape of the institutions created in the CEE states would add to the already significant democratic deficit of the EU.

In brief, socio-constructivism account on enlargement is centered around the constitutive values of the European political order, reflecting a common identity and manifested as such in the Copenhagen criteria as they represent the key building blocks for this enlargement round. After the Cold War CEE countries' search for recognition was met by a EU that hardly could have departed from the ideals it supposedly stood for throughout the entire period of the Cold War[26].

As in the case of integration process itself, there is no one sigle integration theory that can offer a thourough explanation of the enlargement process. In the early stages, the enlargement

[23] Heather Grabbe (2001) "How does Europeanization affect CEE governance? Conditionality, diffusion and diversity" in: *Journal of European Public Policy* 8(6), pp.1028-1029.
[24] Frank Schimmelfennig, Stephen Engert and Heiko Knobel (2003) "Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey" in: *Journal of Common Market Studies* 41(3), p. 495-496.
[25] Heather Grabbe, *art.cit.*, pp. 1020-7.
[26] Karin Fireke and Antje Wiener (1999) "Constructing Institutional Interests: EU and NATO Enlargement" in: *Journal of European Public Policy* 6(4), pp. 721-42.

encountered significant difficulties as a consequence of the recession exacerbated by the costs of German unification and the deflationary policies employed in order to meet EMU convergence criteria. Thus the EU's initial response to the question of enlargement was to deflect the idea of enlargement and give instead priority to the deepening of the existing community thus disadvantaging the CEE countries. However, step-by-step the idea of enlargement gained momentum and after 1997 the whole process turned into a normative determined one as an open and inclusive round of negotiations was called. There are various explanations for this process from common concerns as the realists tend to emphasize to moral considerations and a growing acknowledgement of „shared values" as constructivists would tend to prefer. This process neither fits rationalist assumptions about international politics in a technical environment nor sociological theories of action[27]. When analysing the latest round of the enlargement process the constructivists tend to be in a more favorable position due to the transfer of ideas, norms, values from West to the East that marked it. However, due to its methodological limits constructivism cannot as yet explain the process, but is able to give a powerful account for the outcome of the process.

Bibliography

1. Bailey, David and Lisa de Propris (2004) "A Bridge Too PHARE? EU Pre-Accession and Capacity-Building in the Candidate Countries" in: *Journal of Common Market Studies* 42(1), pp. 77-98.
2. Checkel, Jeffrey T. (1999) "Why Comply? Constructivism, Social Norms and the Study of International Institutions" in: *ARENA,* Working Paper 99/24 (Oslo: Universitetet i Oslo).
3. Checkel, Jeffrey T. (2000) "Compliance and Conditionality" in: *ARENA*, Working Paper 00/18 (Oslo: Universitetet i Oslo).

[27] Frank Schimmelfennig (2000) "International Socialization in the New Europe: Rational Action in an Institutional Environment" in: *European Journal of International Relations* 6(1), pg. 135.

4. Checkel, Jeffrey T. and Andrew Morawcsik (2001) "Forum Section – A Constructivist Research Program in EU Studies?" in: *European Union Politics* 2(2), pp. 219-249.
5. Dimitrova, Antoaneta (2002) "Enlargement, Institution-Building and the EU's Administrative Capacity Requirement" in: W*est European Politics* 25 (4), pp. 171-90.
6. Duțu, Alexandru (1999) *Ideea de Europa si evolutia constiintei europene* (Bucuresti: All Istoric).
7. Fireke, Karin and Antje Wiener (1999) "Constructing Institutional Interests: EU and NATO Enlargement" in: *Journal of European Public Policy* 6(4), pp. 721-42.
8. Fischer, Joschka (2000) "From Confederacy to Federation – Thoughts on the Finality of European Integration". Speech on 12 May 2001 at Humboldt University Berlin, at [http://www.auswaertiges-amt.de/8_suche/index.htm].
9. Friis, Lykke and Anna Murphy (1999) "The European Union and Central and Eastern Europe: Governance and Boundaries" in: *Journal of Common Market Studies* 37(2), p.211-232.
10. Grabbe, Heather (2001) "How does Europeanization affect CEE governance? Conditionality, diffusion and diversity" in: *Journal of European Public Policy* 8(6), pp. 1013-31.
11. Jachtenfuchs, Markus (2002) "Deepening and widening of the integration theory" in: *Journal of European Public Policy* 9(4), pp. 650-7.
12. Kennard, Ann (2000) "Central and Eastern Europe in the EU's Regional Planning Agenda" in: *Journal of European Area Studies* 8(2), pp. 203-19.
13. Matli, Walter and Thomas Plümper (2004) "The Internal Value of External Options – How the EU Shapes the Scope of Regulatory Reforms in Transition Countries" in: *European Union Politics* 5(3), pp. 307-30.
14. Morawcsik, Andrew (1993) "Preferences and Power in the European Community: A Liberal Intergovernmentalist

Approach" in: *Journal of Common Market Studies* 31(4), pp. 473-524.
15. O'Neill, Michael (1996) *The Politics of European Integration. A Reader* (London: Routledge).
16. Papadimitrou, Dimitris and David Phinnemore (2004) „Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania" in: *Journal of Common Market Studies* 42(3), pp. 619-39.
17. Păun, Nicolae, Ciprian-Adrian Paun and Georgiana Ciceo (2003) *Europa Unita, Europa Noastra* (Cluj-Napoca: Presa Universitara Clujeana).
18. Petrescu, Oana-Măriuca (2004) *Programul de finantare PHARE* (Bucureşti: All Beck).
19. Pollack, Mark A. (1997) "Delegation, Agency, and Agenda Setting in the European Community" in: *International Organization* 51(1), pp. 99-134.
20. Pridham, Geoffrey (2002) "Enlargement and Consolidating Democracy in Post-Communist States – Formality and Reality" in: *Journal of Common Market Studies* 40(3), pp. 953-73.
21. Rosamond, Ben (2000) *Theories of European Integration* (New York: Palgrave).
22. Schimmelfennig, Frank (1999) "The Double Puzzle of EU Enlargement: Liberal Norms, Rhetorical Action, and the Decision to Expand to the East" in: *ARENA*, Working Paper 99/15 (Oslo: Universitetet i Oslo).
23. Schimmelfennig, Frank (2000) "International Socialization in the New Europe: Rational Action in an Institutional Environment" in: *European Journal of International Relations* 6(1), pg. 109-139.
24. Schimmelfennig, Frank and Ulrich Sedelmeier (2002) "Theorizing EU enlargement: research focus, hypotheses, and the state of the research" in: *Journal of European Public Policy* 9(4), pp. 500-528.
25. Schimmelfennig, Frank, Stephen Engert and Heiko Knobel (2003) "Costs, Commitment and Compliance: The Impact of EU

Democratic Conditionality on Latvia, Slovakia and Turkey" in: *Journal of Common Market Studies* 41(3), p. 495-518.
26. Schmitter, Philippe C. (1996) "Imaging the Future Euro-Polity with the Help of New Concepts" in: Garry Marks, et.al. *Governance in the European Union* (London: Sage), pp. 121-50.
27. Sedelmeier, Ulrich (2000) "Eastern Enlargement: Risk, Rationality, and Role-Compliance" in: Maria Green Cowles and Michael Smith (ed.) *The State of the European Union: Risks, Reform, Resistance, and Revival* (Oxford: Oxford University Press), pg. 163-185.
28. Smith, Karen (1999) *Politica externa a Uniunii Europene,* ed. translated in Romanian in 2004 (Bucureşti: Trei).
29. Smith, Steve (1999) "Social constructivism and European Studies: a reflectivist critique" in: *Journal of European Public Policy* 6(4), pp. 682-691.
30. Voruba, Georg (2003) "Debate on the enlargement of the European Union. The enlargement crisis of the European Union: limits of the dialectics of integration and expansion" in: *Journal of European Social Policy* 13(1), pp. 35-62.
31. Wallace, Helen (2000) "EU Enlargement: A Neglected Subject" in: Cowles, Maria Green and Smith, Michael (ed.) *The State of the European Union: Risks, Reform, Resistance, and Revival* (Oxford: Oxford University Press), pg. 149-163.
32. Wendt, Alexander (1987) "The Agent-Structure Problem in International Relations Theory" in: *International Organization* 41(3), pp. 335-370.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

AN INTERPRETATION OF ROMANIAN-YUGOSLAV RELATIONS ACCORDING TO FREDERICK H. HARTMANN'S CARDINAL PRINCIPLES

Laura Herța Gongola*

Abstract

Il presente articolo mira a integrare i rapporti bilaterali fra due stati comunisti (la Romania e la Iugoslavia) entro il campo delle relazioni internazionali, e più esattamente entro la struttura creata da Frederick H. Hartmann, e la prospettiva creata dai principi cardinali dell'autore. Il periodo su cui è concentrata l'attenzione è 1948-1970, dato che i rapporti fra i due stati menzionati al di sopra hanno sofferto combiamenti maggiori – da rapporti molto tesi, ostili alla fine del 1940 e l'inizio del 1950 fino a rapporti amichevoli verso la fine del 1960.

Introduction

The aim of this article is an attempt to integrate bilateral relations between two communist countries within the field of international relations, more exactly, within the framework elaborated by Frederick H. Hartmann and the perspective created by the author's *cardinal principles*. I chose to analyze Romania and Yugoslavia as the two states within the Eastern European communist block, since this is a major scientific preoccupation, constituting also the topic of my PhD thesis. The period that the article dwells on is 1948-1970, due to the fact that relations between the two states mentioned above have shifted from the very tense, hostile ones from the late 40's and early 50's up to the friendly ones in the late 60's, when their leaders decided to take a similar stand related to their foreign policy.

---

* Laura Herța Gongola is a Ph.D. candidate at the Faculty of European Studies, Babeş-Bolyai University Cluj

Frederick H. Hartmann, in his *The Relations of Nations*, focused on the challenge that an international relation author encounters when trying to apply a general theory at three levels: 1) at the nation-state level (in this case, this would be an explanatory attempt, meaning that it should reveal why "a particular policy was adopted [by a certain actor within the international system] and the alternative rejected"[1]; 2) at a "sets of nations" level (the second one would be a descriptive one, since it should accurately present and describe the way in which the relations of certain types of nations "interact and influence the behavior of other states"); and 3) at a holistic level, since "the theory must explain the forces, constraints, and tension levels prevailing in the system as a whole".[2]

Frederick H. Hartmann formulated four concepts, which he named the *cardinal principles*, in order to prove that a general theory can be tested at a three-level approach, by using these cardinal principles that connect the three stages of analysis: *third-party influences*, *past-future linkages*, *counterbalancing national interests*, and *the conservation of enemies.* In the author's opinion, the corroboration of these concepts will help the analyst to better observe the emergent behavioral patterns of units[3] within the system of international relations, of the relations of such units and their inherent influence on the evolution of other states' policies, as well as of the system, as a whole.

The purpose of this article is to interpret Romanian-Yugoslav relations according to the cardinal principles expressed by Hartmann, throughout a period of time (1948-1970), when relations

---

[1] Frederick H. Hartmann, *The Relations of Nations*, 5th ed., New York: Macmillan Publishing, 1978, p. X.

[2] ibidem, *loc. cit.*

[3] In this context, units are to be translated by nation-states, due to the fact that we want to maintain Hartmann's meaning and approach on the matter, therefore other actors of the international arena (such as international organizations, multinational corporations etc.) are not taken into consideration, in this article, on purpose.

between the two states cannot only be more easily observed, due to their foreign policy decisions, but are also passing through different, gradual stages.

The approach of this article is neither a historical one, therefore my intent is to only offer a brief survey over the political and historical evolution of the two countries, nor mainly a theoretical approach on the totalitarian leftist régimes. It merely tries to integrate communist Romanian-Yugoslav relations within the discourse of Fredrick Hartmann and apply his cardinal principles to the bilateral relations between the two states.

The first cardinal principle: *Third Party Influences*

By *third party influences*, Hartmann means that *"an interaction between two states in a multilateral system is never as merely bilateral as it seems"*[4]. This refers to the fact that within international politics, two states may experience increased cooperation or, on the contrary, hostile or competing relations, due to the existence of, at least, a third state which decisively contours them. Clear observance on the behavior in the system is generated by this principle, according to Hartmann.

At a first glance, the idea that a third party, meaning the Soviet Union, greatly influenced the Romanian-Yugoslav relations, within the polarized world during the cold war, may seem superfluous. What I argue here is the fact that not only the Soviet Union, as a third party, played a crucial role, as far as bilateral relations between Romania and Yugoslavia are concerned, but also the fact that, to some extent, Soviet leaders, as individual third parties, "shaped" the evolution of these relations. More exactly, I will try to show how Romanian-Yugoslav relations moved through four different levels: 1) hostile relations from 1948 and up to the mid 50's; 2) "normalized" ones from 1956 to 1960; 3) "good vicinity" relations within the time interval from 1960 to 1965 and 4) friendly relations based on increased cooperation up to 1970.

[4] Hartmann, *op. cit.*, p. 18.

Right from the beginning, the policy of the Romanian Communist Party was decided at the meetings of the Communist International. The Romanian CP members could be described as the pawns who would execute Moscow's decisions. This period is referred to as one of total subordination towards the Soviet communist party, primarily because of the lack of cohesion of the Romanian Communist Party. At the end of World War II, the Romanian communists were fragmented into three different groups. The first one was in Moscow and it was led by Ana Pauker, the second communist nucleus was constituted of imprisoned party members and was coordinated by Gheorghe Gheorghiu-Dej and the third group was the outlawed, though not imprisoned, one.[5]

In the late 1940's, after Gheorghiu-Dej had became the leader of the Romanian Communist Party and, especially, after he had read the report "*The Yugoslav Communist Party in the Hands of Assassins and Spies*", at a Cominform meeting, in Bucharest (following the Tito-Stalin split, in 1948), the period up to the late 50's is characterized by obedience and maximum dependency of the Romanian communist state towards the Soviet Union.

As compared to the other East European communist countries, in Romania, the party members were not as numerous in the beginning, the communist leaders were not much of prominent figures and the party itself did not have much of support at societal level.[6] Therefore, the sovietization of Romania was a *sine-qua-non* condition in order for the local communists to gain political power. "Here, the real power, the only power that maintained the leading

[5] For details, see Stelian Tănase, *Elite şi societate. Guvernarea Gheorghiu-Dej. 1948-1965*, Bucureşti, Editura Humanitas, 1998, pp. 31-38.

[6] For instance, in post-war Yugoslavia, Iosip Broz Tito had a large popularity. Due to the Partisans' fights that he had led during the war against the Axis Powers, he could easily rely on the loyalty of his closest right hand men/party comrades, on the support of the numerous and powerful communist Yugoslav party and on most of the population, which saw in him the most competent and legitimate leader of the country, at the time.

group was the Soviet power. Much more than anywhere else and in a much less camouflaged way, the Soviets were present in the army, in the police, in the administration, in economic life […]. In the communist *milieu* of other people's democracies, right from 1947, Romania was referred to as the XVIIth Soviet republic."[7]

After blaming Tito for his "anti-Soviet", "imperialist" actions, the message that Gheorghiu-Dej formulated in its external relations, especially as far as the Soviet Union was concerned, contained the following two issues: 1) accepting the satellite relation with the Soviet Union and 2) "importing"/"borrowing" the Soviet totalitarian model in Romania. Therefore, we can say that the Romanian Communist Party "recognized" the fact that the people's democracy of Soviet origin was the most adequate path in the political evolution of Romania.

The existence of the third party influences, in this context, is already obvious. The role that the Soviet Union and the Red Army played in the evolution of Romania is constantly repeated by the Romanian Communists, in order to justify their position of absolute loyalty towards the Soviet "big brother". The idea behind this was the indoctrination of the population with the fact that political and social ideals of the Romanians coincide with the ones of the Soviets, therefore the satellite relations was in our best interest; besides, the Romanian Communist Party, which lacked cohesion and support from the population needed to prove (either by terror or indoctrination) that it was the most adequate solution for the country's evolution.

Consequently, the Romania-Yugoslav relations, from 1948 to 1953, could be termed as very tense and hostile. The Soviet third party influence is constantly present when trying to analyze this period. The aggressiveness and hostile dimension were also included in the two countries' political and diplomatic declarations.

---

[7] François Fejtö, *Histoire des démocracies populaires*, Editions du Seuil, Paris, 1952, p. 289; also, quoted in Tănase, *op. cit.*, p. 36.

On one hand, the incidents at the border separating the two countries, for instance, were explained by the Romanians' anxiety over the fact that the Yugoslav "disobedience" might be transferred into our country through the infiltration of the "titoist spies", which basically generated a state of paroxysm at the border: documents from the Ministry of Foreign Affairs were mentioning balloons filled with "titoist manifestoes" at the border area, in order to influence the Romanian population, the Romanian Embassy in Belgrade was constantly sending home messages about the provocative actions against the Soviet Union and the other East European states taken by the Yugoslavs.

On the other hand, in Yugoslavia, "the economic aggression against Yugoslavia by the governments of the USSR and Eastern European countries" was stressed. I will only offer one example here, but documents of this kind were numerous: "The idea […] of using economic aggression to achieve political purposes in relation to Yugoslavia did not bring the results which the governments of the USSR and other countries of Eastern Europe were aiming for" […] "An obvious example of such one-sided economic warfare is the cancellation of contracts of purchases already paid for by Yugoslavia which can be seen from the correspondence between the Yugoslav Commercial Attaché in Vienna and the Director of Soviet Enterprises in Austria. […] The other countries of Eastern Europe behaved in a similar manner towards Yugoslavia. Especially typical in this respect was the behavior of the Rumanian Government, which, even before the Cominform Resolution, began in the first half of 1948 to stop deliveries to Yugoslavia of oil and petrol from wells and refineries which were in the hands of Soviet-Rumanian mixed companies, obviously calculating that the sudden scarcity of liquid fuel would cause serious disorders in Yugoslav economic life".[8]

---

[8] White Book on Aggressive Activities by the Governments of the USSR, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria and Albania towards Yugoslavia, Ministry of Foreign Affairs of the Federal People's Republic of Yugoslavia, Belgrade, 1951, pp. 33, 35.

Therefore, we may say that clearly the USSR was the third party which influenced relations between the two countries, which, as Hartmann asserted, are never as bilateral as they seem. Even more, it was Stalin's "strong fist" and the characteristics that came with the territory of his régime that outlined them.

After the death of Stalin, the relationship with the Soviet Union, based on subordination, was not modified immediately. On one hand, the Soviet Union Politburo continued to consider as mandatory the dependency of East European satellites, but, on the other hand, the "new course" at Kremlin was aiming towards getting rid of certain methods (i.e. reducing the terror on population, attempts made in order to raise the life standard, releasing some of the political prisoners) and, surely, most of these measures were also imposed into the satellite states.[9]

Khrushchev's secret report within the XXth Congress of the Soviet Union CP, denouncing Stalin's crimes and cult of personality, also played a crucial role in shaping Romanian-Yugoslav relations. Due to the "peaceful coexistence" that he promoted, the normalization of relations that we have placed under interest here occurred: the "titoist" and "imperialist" spies were no longer threatening the border, Tito was no longer offending the Soviet leader by his actions, and forms of cooperation (weather cultural, economic or political) between Romania and Yugoslavia start to be developed, as it can be seen in the time's press.

Even though certain peculiar characteristics of Romanian communist system are worth taking into consideration (such as lack of cohesion within the party, tight subordination to Moscow, lack of legitimate political leaders at societal level), still, the Romanian-Yugoslav relations, as we can easily observe, were almost like a *dictatum* of the Soviet third party. More than that, the interactions

---

[9] Tănase, *op. cit.*, pp. 96-108; Victor Frunză *Istoria stalinismului în România*, 1990, pp. 421-423; Barbara Jelavich *Istoria Balcanilor*, pp. 334-336.

between the two communist states were influenced accordingly to the Soviet leaders individual régimes.

I called the third type of Romanian-Yugoslav relations, the "good vicinity" ones, because many collaborations between the two neighboring countries were developed in the 1960's (one of the most important ones was the common Iron Gates project).

The fourth type of relations, from 1965 to 1970, are mainly related to a similar positioning (regarding the Warsaw Treaty states' invasion in Prague), as far as foreign policies of the two states are concerned, to a personal friendly relationship between the two political leaders (Ceauşescu and Tito), to increased cultural, economic and political cooperations between Romania and Yugoslavia.

Still, this evolution of the relations analyzed in this article was definitely influenced by a third party, weather it was the Soviet Union or communist China and the Moscow-Beijing dispute, weather it was the Czech "Socialism with Human Face" program, or third parties emergent from the cold war geopolitics.

The second cardinal principle: *Past-future linkages*

By *past-future linkages*, Hartmann refers to the fact that "the time sense and the expectations of the parties are critical to their relationships".[10] This means that if, at some point, two or three actors have a common stand vis-à-vis a certain issue, this should not be analyzed strictly in accordance to that particular "present", but it should be tightly connected to each of the actor's past experience and future expectations, since one decision at a present time emerges from the particular actor's past or history and is formulated according to its future desired results. Therefore, the two or three actors may, apparently, have a common position on a specific topic or they may "work from an agreed agenda" and may be "addressing the same problem" (as Hartmann says), still, each of the actor's

[10] Hartmann, *op. cit.*, p. 18.

positions are differently anchored in the past and they are differently envisioned in the future.

Going back to my attempt to prove the applicability of Hartmann's principles on Romanian-Yugoslav relations, we may say that Gheorghiu-Dej's decision to denounce Tito's "deviation" from the Soviet model of communism was strongly linked, on one hand, with the forerunning historical facts in the aftermath of World War II, within the Soviet influenced East European block; therefore, Romania, as an actor among the other East European ones, all of them criticizing Yugoslavia's position, had certain reasons stemming from its recent past and circumstances (for example lack of a strong leftist tradition, as compared to the Polish, Czech or Hungarian one, lack of cohesion or prominent leaders). On the other hand, it had particular future expectations, since the political leaders were mainly trying to reassure Moscow about their fidelity and to reinforce their power positions. Therefore, Romania's *past-future linkages*, when addressing Yugoslavia's political path, were different from the Soviet Union's ones, whose future expectations was definitely not the arising of a type of counterbalance in Belgrade and not the creation of a breach within the Soviet influenced camp, judging from the cold war's geopolitics point of view.

The third cardinal principle: *Counterbalancing national interests*

Hartmann explains this principle by the fact that "the choice by a state of a national interest for inclusion, for the time being, in a foreign policy is at the expense of its alternative and that such alternatives always exist".[11] This means that a state always has two well defined options, as far as foreign policy is concerned, and that one choice, identified as best representing a national interest, will automatically exclude the other existing one.

I will now try to argue that Romania's evolution in the 60's is relevant for the interpretation of Hartmann's third cardinal principle,

[11] Hartmann, *loc. cit.*

because the Romanian communist leaders took the first important stand against the Soviet Union, which, at that time, constituted a foreign policy decision, following a national interest, and which was taken at the expense of its alternative.

It all began in 1962, when Khrushchev proposed certain methods in order to reduce the role of the political factor and increase the economic one. What he intended was to reach o *rapprochement* among the economies in the Eastern European states and then integrate them under the umbrella of the Council for Economic Mutual Assistance, in order to create a counter-balance for the West Europeans' common market. Khrushchev envisaged this by focusing on industry in the most developed "Eastern satellites", namely the Democratic Republic of Germany, Czechoslovakia, Hungary and Poland; the other Eastern countries (Romania included) would focus less on industry and more on agriculture. Above all, the Soviet leader intended to create a supra-statal organism that would coordinate the economic evolution of "Eastern satellites", based on the argument that each country would be specialized in one relevant field, according to its current economic particularities.

For the Romanian communist leaders this was just an euphemism for keeping Romania (a predominantly agricultural country) at a sub-modernized level. According to them, modernization meant industrialization, therefore Romania needed an industrial economy in order to ensure its development.

In 1964, the Romanian communist leaders published a long document in the party's newspaper "Scînteia" (known as the *April Declaration*[12]), explaining why they reject the creation of a such supra-statal organism that would dictate the economies in Eastern Europe,

[12] The complete title of the document is *The Declaration regarding the Romanian Working Party towards the Problems of International Communist and Workers' Movement adopted by the extended Plenary of the Central Committee of the Romanian Working Party, in April 1964*.

invoking the right to national planning of the economy, as a fundamental attribute of the sovereignty of the socialist state.

> "Due to the diversity of conditions in order to build socialism, there aren't, nor can there be, patterns or unique recipe; no one can decide what is right and what is not right for other countries or parties".[13]

Even though the language/discourse was integrated within Marxist ideology, this April Declaration marked the beginning of a certain form of autonomy as far as Romania is concerned and an attempt to detach from Soviet control, after 16 years of total obedience.

Romania's intent to retreat from the Soviet strict control had a powerful economic component at the beginning (namely the desire not to remain a less industrialized, agricultural country) but, later, it gained a political dimension, because Gheorghiu-Dej's strategy was also based on concepts such as non-intervention from the Soviet Union in the internal affairs of Romania and respect for national sovereignty.

Starting with the April Declaration, the Romanian communists began, gradually, to promote a foreign policy different from the one imposed by Moscow.

Gheorghiu-Dej did not really intend to create a breach in the Soviet influenced camp, but merely to obtain a certain economic independence; he did not want to reform the system, but only a more loosened relationship with Moscow, an openness towards the Occident, in economic terms, maintaining at the same time an assurance from the Soviet Union.

According to Hartmann's third cardinal principle, in 1963, when Romania was facing Khrushchev's envisioned economic strategy within the Eastern block, it had two clear alternatives and the rational inclusion of one, representing a national interest, into its foreign policy, meant the exclusion of the other alternative. The two

---

[13] Extract from Scînteia, no. 6239, the 26th of April, 1964, p. 3.

counterbalancing national interests in Romania's case were, on one hand, keeping the non-animosity relations with USSR, by accepting the agricultural position within the Council for Economic Mutual Assistance imagined by the Soviet leader, and, on the other hand, an economy based on industry which would have assured its development (hence, the rejection of this economic evolution based on the fact that it would remain a less industrialized state. By rationally picking the first interest and by including it into its foreign policy, Romania immediately excluded the other alternative.

According to Hartmann, this third principle and also the forth one (which I will later elaborate on) are important at the system level, because they focus attention on the rules and patterns by which the system functions. The importance of the Romanian April Declaration, in this context, resides on the fact that, for the first time, the Romanian communist leaders underlined principles concerning relations between communist parties and, *in extensio*, among the socialist states, thus extending to a system level. One of the principles stipulated that the creation of a supra-statal organism, constituted as a unique planning center, as formulated by Khrushchev, was not admissible. Another principle that the Declaration highlighted referred to every communist state's right to resort to its own methods and forms of "building socialism".

The fourth cardinal principle: ***The "conservation" of enemies***

Frederick Hartmann's explanation of this last principle refers to the fact that "prudent states do not seek to amass more enemies that they can effectively counter or handle at any one time".[14] This means, that a state will cautiously not try to increase the number of its enemies, thus intending to "preserve", to maintain the number of its current enemies, which it can deal with.

In 1948, Romania's calculus as far as number of enemies was concerned can be called extremely prudent (even though other

[14] Hartmann, *op. cit.*, p. 19.

factors, mentioned in the previous paragraphs, leading to its position vis-à-vis Yugoslavia's national communism and Tito-Stalin split were determinant). Still, I here argue that, since the Western countries were considered the greatest enemies anyway, within the sub-level of the Soviet influenced communist block, Romania preserved its allies, the most powerful one, the USSR, and the other East European states, and identified only Yugoslavia as the enemy.

In 1968, Tito and Ceauşescu had a similar stand regarding the Warsaw Treaty states' invasion in Prague. The events in Czechoslovakia had divided the states within the Soviet block into two camps: Romania, Yugoslavia and Czechoslovakia, on one side, and USSR, Poland, Hungary, Bulgaria and the GDR, on the other side. The first three states "arrived" in the same camp following different paths: Yugoslavia was already the prominent actor within the non-alignment movement, it had a different economy, as compared to the other socialist states, it had benefited from Western support etc. Romania's positioning next to Yugoslavia's was caused by the first step towards "autonomy", when it conceived the April Declaration, and by the "independent" policy and support for a form of *détente* and "peace among peoples" discourse within the international system, which Ceauşescu was stressing.

We may, however, interpret Ceauşescu's position regarding the Prague invasion, according to "preservation" of enemies' principle, since the number of enemies within the socialist block might have become higher, but the number of Western enemies might have been decreased.

References

1. Hartmann, Frederick, H. (1978) *The Relations of Nations*, 5th ed., New York: Macmillan Publishing, pp. X-XIII, 3-20.

2. Tismaneanu, Vladimir (2003) *Stalinism pentru eternitate. O istorie politică a comunismului românesc (Stalinism for All Seasons: A political History of Romanian Communism)*, University of California Press.

3. Bocşan, Nicolae; Leu, Valeriu (2001) *Cronologia Europei centrale. 1848-1989 (Chronology of Central Europe. 1848-1989)*, Iaşi, Editura Polirom.

4. Fejtö, François (1952) *Histoire des démocraties populaires*, Editions du Seuil.

5. Jelavich, Barbara (2000) *Istoria Balcanilor (History of Balkans)*, second volume, Iaşi, Institutul European.

6. Bărbulescu, Mihai; Deletant, Dennis; Hitchins, Keith, Papacostea, Şerban; Teodor, Pompiliu (1998) *Istoria României (History of Romania)*, Bucureşti, Editura Enciclopedică.

7. Christmas, Henry M. (1969) *Communism in action: a documentary history*, Bantam Books, New York.

8. Frunză, Victor (1990) *Istoria stalinismului în România (History of Stalinism in Romania)*, Bucureşti, Editura Humanitas.

9. Tănase, Stelian (1998) *Elite şi societate. Guvernarea Gheorghiu-Dej. 1948-1965 (Elites and Society. Gheorghe Gheorghiu-Dej's Govern. 1948-1965)*, Bucureşti, Editura Humanitas.

10. *Scînteia*, issue no. 6239, 26th of April, 1964.

11. *White Book on Aggressive Activities by the Governments of the USSR, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria and Albania towards Yugoslavia* (1951) Ministry of Foreign Affairs of the Federal People's Republic of Yugoslavia, Belgrade.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

FROM THEORY TO FACTS: SOME WORKING HYPOTHESES ON THE FOREIGN POLICY OF THE CENTRAL AND EASTERN EUROPEAN STATES

Ruxandra Ivan*

There are several questions whose answers might explain, for the political scientist, the way in which a state conducts foreign policy. First of all, a question of the type "how is foreign policy being made?" would lead us into a research on the organizational bases of decision-making, largely conducted in the 60s and 70s by what has been called *the foreign policy analysis* approach[1]. Or we might ask "who makes foreign policy? Is it the State as such, or the individual decision-makers?". But because the study of foreign policy is on the edge between the internal and the external realm of the State, between IR and political science, we shall need tools from both disciplines in order to seize the nature of foreign policy decision-making. Thus, internal factors alone or external factors alone are not sufficient to explain the actions of a State. This being said, one might combine the external pressures of the distribution of capabilities in the system and the internal constraints and drawbacks of the bureaucratic process in order to have an image of how decision is being made at the national level. Or, for a neo-liberal, a good combination would be that of external pressure of International Organizations and internal bargaining among political groups. This is, of course, a caricaturized image of different possible approaches to the study of foreign policy, taking into account external and

---

* PhD candidate, Free University of Brussels/University of Bucharest

[1] For some important hallmarks of this approach, see Joseph FRANKEL, *The Making of Foreign Policy*, London, Oxford University Press, 1963; Graham ALLISON, *The Essence of Decision*, Boston, Little Brown, 1971; Michael CLARKE, Brian WHITE (eds.), *Understanding Foreign Policy*, Aldershot, Edward Elgar, 1989.

internal factors. We are trying to place ourselves in a different stance of thought, and to have a comprehensive view on foreign policy-making, by asking the question: "how can we understand the foreign policy of the Central and Eastern European Countries (CEECs)?". We will try to propose some working hypotheses for the understanding of foreign policy which draw on the assumptions that, on the one hand, the structures of the international system are primarily ideational, and not material, and on the other hand, that the identities of actors are not naturally given, but constructed through a process of intersubjectivity[2]. This leads us to consider ideas as structural, but meanwhile allows us to take into account the agency role of socially constructed subjects.

The Units of Analysis

Thus, the first necessary clarification concerns the "actorness": who is the actor when we speak about foreign policy? Is it simply "the State"? Indeed, the mainstream theories of IR took for granted the effectiveness of the existence of the State as a unitary agent – "the personhood of the State": "Realists, neo-realists, neo-liberal institutionalists, theorists of international society, and even many Marxists were content to treat states as, in effect, big people, endowed with perceptions, desires, emotions and other attributes of personhood"[3]. "Is the State real, is it a fiction, or is it a theoretical abstraction?", asks Colin Wight[4]. In doing this, he draws upon the statements of Robert Gilpin, according to which "the State does not

---

[2] These are the two basic tenets of constructivism, as stated by Alexander WENDT, *Social Theory of International Politics*, Cambridge, Cambridge University Press, 1999, p. 1.

[3] Patrick Thaddeus JACKSON, "Is the State a Person? Why Should We Care?", in *Review of International Studies*, vol. 30, no. 2, April 2004, p. 255.

[4] Colin WIGHT, "State Agency: Social Action Without Human Activity?", in *Review of International Studies*, vol. 30, no. 2, April 2004, p. 269.

really exist"[5], and of Alexander Wendt, who writes that "States are people too"[6]. These authors held opposed views on the personhood of the State: for Gilpin and the realists, the theory of international relations is conceived "as if" the unitary rational State existed, without questioning its nature[7]. Meanwhile, Wendt, through its theory, is contesting this approach. He asserts that as long as the State is socially recognized as having personality and agency, it actually is a person[8]. In this context, Wendt ascribes to State human features, such as desires, beliefs, intentionality and even 'the sense of Self'[9]. And more than that: "But there are two other, more radical senses in which states might be persons: they might be *organisms*, understood as forms of life; and they might have collective consciousness, understood as subjective experience"[10]. But can we consider that it is the "consciousness" of the State which emanates foreign policy? We would rather agree with Iver Neumann, who, during the same debate, emphasizes the excessively organicist vision of Wendt and points to the fact that this is more of a limit than a facilitator to our understanding of the nature of international politics[11].

But in fact, it might be dangerous to think of a State as a 'person' if we adopt an ethical perspective. An anthropomorphized State could pretend to found meta-ethics which transcends the human society, as a means to justify its abuses. Moreover,

[5] Robert GILPIN, "The Richness of the Tradition of Political Realism", in Robert KEOHANE (ed.), *Neorealism and Its Critics*, New York, Columbia University Press, 1986, p. 318.

[6] Alexander WENDT, *Social Theory of International Politics*, Cambridge, Cambridge University Press, 1999.

[7] Patrick Thaddeus JACSON, *art. cit.*, p. 255.

[8] Alexander WENDT, "The State As Person In International Theory", in *Review of International Studies*, vol. 30, no. 2, April 2004, pp. 289-316, *passim*.

[9] IDEM, *Social Theory…, op. cit.*, p. 194, 197.

[10] IDEM, *art. cit.*, p. 291.

[11] Iver B. NEUMANN, "Beware of Organicism: The Narrative Self of the State", in *Review of International Studies*, vol. 30, no. 2, April 2004, p. 260.

responsibility is completely de-localized in such a State. Our perspective opposes this stance of though, as we are trying to inquire into the responsibility for foreign policy. We consider that the formulation and implementation of foreign policy cannot be simply attributed to 'the State' as such. We thus prefer a nominalist conception of the State, following a tradition which goes from Hobbes to Kelsen, considering that "the State cannot be separated of its agents and magistrates, every action of the State essentially being an action of concrete human beings"[12]. This perspective is also supported by Max Weber, who writes: "For sociological purposes there is no such thing as a collective personality which 'acts' (…), only a certain kind of development of actual or possible social actions of individual persons"[13]. And if we are to follow Wendt's advice, according to which "scientists need theories of their primitive units"[14], then a theory of foreign policy must relate to the basic units of analysis, the decision-makers.

The Object of Research

We shall turn now to the empirical object of our research: Central and Eastern European States. Several scientific works have considered the way in which decision-makers from newly democratic States are getting contact with international norms and are finally internalizing them. One of the first such works was that of Risse, Ropp and Sikkink, who proposed a five-stage model in which national elites are suffering a process of socialization, at the end of which they internalize human rights norms[15]. Another hallmark in

---

[12] Daniel BARBU, *Republica absenta*, Bucuresti, Nemira, 1999, p. 122.

[13] Max WEBER, *The Theory of Social and Economic Organization*, New York, Free Press, 1964, p. 102.

[14] Alexander WENDT, "The Agent-Structure Problem in International Relations Theory", in *International Organization*, vol. 41, no. 3, 1997, p. 349.

[15] T. RISSE, S. ROPP and K. SIKKINK (eds.), *The Power of Human Rights. International Norms and Domestic Change*, Cambridge, Cambridge University Press, 1999.

this kind of research is Jeffrey T. Checkel. Taking as empirical example the USSR/Russia, he writes about the way in which ideas, understood as "consensual knowledge", influence State policy[16]. Socialization of decision-makers in the international environment is thus one important explanatory factor of the foreign policy decisions of the Central and East European States. But how does socialization take place, how smooth is the process and how can we conceptualize its translation into policies? These are the main questions to which we are trying to offer a theoretical answer.

The recent research on socialization[17] shows that norms, ideas and values circulated in the international environment ant promoted mainly by international organizations shape the identities and interests of national decision-makers. Thus, there is a difference between compliance to norms because of coercion and incentives linked to a strategic calculation of outcomes and compliance because the actors themselves have internalized those norms. This difference is the one conceptualized by Wendt, between behavioral effects and property effects upon actors[18]. The socializing effect of norms might translate into learning and internalizing under specific conditions: one of them is the matching of the political culture of the socialized elites and the norms they get into contact with, and the historical

[16] Jeffrey T. CHECKEL, *Ideas And International Political Change. Soviet/Russian behavior and the end of the Cold War*, New Haven and London, Yale University Press, 1997; also see IDEM, "International Institutions and Socialization", *Arena Working Paper 99/5*; IDEM, "Sanctions, Social Learning and Institutions: Explaining State Compliance with the Norms of the European Human Rights Regime", *Arena Working Paper 99/11*; IDEM, "Norms, Institutions and National Identity in Contemporary Europe", *Arena Working Paper 98/16* etc.

[17] Defined as "the key mechanism that connects international institutions and norm to states or to groups and agents within them", more precisely as "a process of learning in which norms and ideas are transmitted from one party to another", Jeffrey T. CHECKEL, "International Institutions and Socialization", *loc. cit.*

[18] Alexander WENDT, *The Social Theory…, op. cit.* p. 26.

heritage of these elites[19]. But let us move away from the theory for a moment and look at the empirical object of the research.

A first empirical assessment of the CEEC's foreign policy leads us to three types of remarks. First, these countries don't generally have outstandingly original foreign policy initiatives; they conform to international rules, have friendly relations with each other and their neighbors, and implement general international norms and particularly those required by the international organizations. Second, they seem to have deep security concerns that lead them to bandwagon with the major power in the system; by doing this, they don't seem to be aware of the inadvertency between supporting, for example, American intervention in Iraq, and their option to be part of a "West-European non-war security community"[20]. Finally, there is a gap which regards the foreign-policy personnel, this being composed, in the first post-communist years, either from former *apparatchiks* or from non-professional outsiders.

Thus, there are several peculiarities of foreign policy in CEECs. One of them is that it had to be completely reconsidered after the fall of the communist regimes. These countries moved quickly from the soviet camp, first to a "neutral" line of foreign policy; they distanced themselves from Moscow and they managed to press for the dismantling of the Warsaw Pact in July 1991. Their foreign policy becomes now mainly oriented to the West, and its primary goals are directed to the inclusion into western organizations, such as the Council of Europe, NATO and, later, the EU. It is an interesting fact that some of the former communist countries began to talk about possible NATO membership already in 1990, before NATO itself was willing to accept the idea of enlargement[21].

---

[19] Jeffrey T. CHECKEL, "International Institutions and Socialization", *loc cit.*

[20] Ole WAEVER, "Insecurity, Security and Asecurity in the West European non-war community", in E. ADLER, M. BARNETT (eds.), *Security Communities*, Cambridge, Cambridge University Press, 1998, pp. 69-118.

[21] For the Hungarian example, see Joseph C. KUN, *Hungarian Foreign Policy. The experience of a new democracy*, Westport, Conncecticut, London, 1993, pp. 41-49.

If we move on to more recent times, a second peculiarity of the CEEC's foreign policy is their willingness to support the American intervention in Iraq, in spite of the strong opposition of some of their European friends, among which France is the first example: President Chirac declared at that moment that the Eastern European Countries missed a good opportunity to shut up[22]. This tendency to prioritize NATO membership (in this case to the detriment of the EU membership, especially for Romania and Bulgaria) might seem strange, given that NATO membership does not entail economic prosperity, and that there are no apparent direct or imminent security threats to the countries in question. This is one of the problems that might be addressed by the model that we'll propose in this paper.

Finally, as we demonstrated above, there is the issue of the decision-making apparatus. Here, there are some important particular features of the CEECs. This apparatus had to be re-invented, drawing on the old structures inherited from the communist era, but also inducing change. Thus, the persons in charge of the foreign policy are either coming from the old *nomenklatura* – as bureaucratic incrementalism makes complete change impossible in a short period of time – or new-comers in the system, especially well-known intellectuals with no experience in the diplomatic activities or in foreign policy-making[23]. The fact that foreign policy decisions are made by these two categories of personnel might prove an important variable for understanding the policy decisions.

---

[22] *Le Monde*, 18. 02. 2003.

[23] The Antall government in Hungaria, for example, replaced a large number of diplomats in 1990. „The fact that since the early 1950s the Hungarian diplomatic corps had been dominated by communist loyalists made it virtually impossible to find professionals in this field who had not been Communist Party members. Conversely, those found ideologically fit to represent the new government had no diplomatic or, in most instances, significant international experience", Joseph C. KUN, *Hungarian Foreign Policy. The experience of a new democracy*, Westport, Conncecticut, London, 1993, p. 65. This applies for all the CEECs.

This is why we are proposing a model for the study of foreign policy decision making which has as material object the elites in charge with the foreign policy, and can be constructed upon two main foundations: the notion of habitus, taken from Pierre Bourdieu, and the conceptualization of the process of socialization of these elites in the international environment. In the remaining of this paper, we will argue that the decisions made by actors, the individual decision-makers, result on the one hand from the actors' habitus, on which the process of socialization superposes, on the other hand, new values, ideas and norms. Thus, the notion of habitus might help us understand the resistance to change (and, although this might seem paradoxical, we include here the decision of the CEECs to support the intervention in Iraq), while the notion of socialization explains the implementation of more co-operative policies, including that of norms of human rights and international law.

The Hypotheses

Habitus is, according to Bourdieu, "a system of dispositions acquired through implicit or explicit learning which functions as a system generating patterns" and which "generates strategies that can be objectively in keeping with the subjective interests of their authors without having been especially conceived with this purpose"[24]. This means that actors, through socialization, acquire certain pre-established patterns of action which make them prefer a type of behavior to all other possible behaviors in a given situation. Habitus is thus a determinative pattern for actors' behavior, not in the sense that it *imposes* actions, but that it offers limited possibilities for action

[24] Pierre BOURDIEU, « Quelques propriétés des champs », in IDEM, *Questions de sociologie*, Paris, Ed. de Minuit, pp. 113-120, p. 119. We've chosen this definition for reasons of clarity; habitus is a notion constantly used in Bourdieu's works: see also *Esquisse d'une théorie de la pratique*, Paris, Ed. Du Seuil, 2000 (1972), pp. 256-285; *Le sens pratique*, Paris, Ed. De Minuit, 1980, pp. 87-110 ; *La distinction. Critique sociale du jugenment*, Paris, Ed. De Minuit, 1979, pp. 189-248.

in a specified context. Habitus is not imposed from the outside, as rules are, but it is intrinsic to actors, without nevertheless being conscious[25]. Institutions, privileged places for socialization, are producing specific habituses, but an actor's habitus results from the first socialization in the family and in school, upon which institutional socialization at the workplace is superposed. This is why it is important to inquire into the actors' past, to see their social trajectory, in order to have a complete image of their habitus.

Thus, foreign-policy decision-makers are neither uniquely the product of institutions or society, nor completely free to create themselves and to make decisions in a completely rational way, as the rational actor model supposes. There is a dialectical process between actors choosing themselves and their behavior (however, as the habitus theory say, from a limited spectrum of possible behaviors), on the one hand, and structures that create and influence actors, on the other hand[26].

The first object of analysis of our model is thus the habitus of foreign policy decision makers; the second are the institutional structures of the Foreign Ministries in which they operate, an the third – the results of the interaction between agents and structures. The model can be summarized as follows:

1. The foreign policy elites of the CEECs emerged, after the fall of communism, either from former foreign policy elites, or from the young *intelligentsia* which managed to transform their cultural capital in power resource. They enter the Foreign Office

---

[25] "It's because subjects don't know, strictly speaking, what they are doing, that what they do has more sense than they know", Pierre BOURDIEU, *Esquisse…*, *op. cit.*, p. 273.

[26] A wider debate on the way in which we understand de dialectic between actors and structures is not possible here, but we draw on the theory of practice of Bourdieu, quoted above, and on the theory of structuration of Anthony GIDDENS (*The Constitution of Society. Outline of the Theory of Structuration*, Cambridge, Polity Press, 1984).

with a set of beliefs and values acquired in the first stages of socialization.

2. The interaction between these elites and the institutional practices of the Foreign Offices takes place in two simultaneous processes:

a. The habitus of elites is influenced through contact with the settled institutions, this being a second degree of socialization;

b. The elites modify existing institutions according to their specific habitus.

Put it another way, agents and institutions are mutually constitutive.

3. Decision-makers are getting contact with foreign environment by the nature of their work; they thus socialize in a different political environment, in which they learn new practices and norms, political and technical expertise.

4. In time, decision-makers modify their beliefs and value system, by internalizing the norms they've learnt, and they apply those norms in national settings.

5. After this third process of socialization, the elites go further in transforming institutions. The result is an evolutionary foreign policy discourse, which integrates more and more the norms, values and ideas in accordance to those that circulate at the European and international level.

The foreign policy discourse of the CEECs is thus, finally, the product of a political elite that has been socialized in the international environment and of the institutions modeled by this elite.

The model actually conceives foreign policy decision making by addressing the behavior of actors and the causes that lead them to prefer certain types of behavior to others. Thus, actors' habitus is constituted and evolves in three stages. The first one is the actors' primary socialization in their family and through institutionalized education and the cultural capital that they are acquiring. This is important because the fundamental structures of the habitus are

strongly influenced by the family and the types of capital held by parents[27]. This stage of socialization is completely achieved at the moment of the research: the formative process that actors undergo before getting into the Foreign Offices is finished. That's why, in this stage, the research can be conducted as a classical sociological elite research, through inquiry on the social origins of actors, their biography and their professional trajectory. We must also note that the presence of these persons in the foreign policy apparatus is not accidental: the type of recruitment and selection in an organization always take into account a certain degree of matching between the newcomers' habitus and the institutional habitus[28].

The second conceptual stage of the model is related to the interaction between agents and structures, these being understood as sets of rules and resources integrated in a specific field[29]. The definition of Giddens allows us not to reify our conception of structures, and to develop a hypothesis on the possibility, for agents, to interact with them and even to modify them, being in the same time constructed by them. This double-edged relationship can be synthesized as "mutual constitution of agents and structures", and by this we are trying to overcome the duality, often perceived as irreconcilable, between agents and structures: most theories of social action try to explain the social world either through agency, or through structures. But we cannot affirm the primacy of either without simplifying the social reality, either reifying, or isolating actors from their social context. Our conception on the interaction between agents and structures draws largely on the structuration theory of Anthony Giddens, and is based on the idea of a constitutive relationship between the two terms of the dichotomy: both agents

---

[27] P. BOURDIEU, *La distinction…., op. cit.*, 1979, p. 12 *et passim* ; Peter L. BERGER, Thomas LUCKMANN, *The Social Construction of Reality*, London, Allen Lane, 1971 (1966), p. 151.

[28] Pierre BOURDIEU, "Les fondements historiques de la raison", in IDEM, *Méditations pascaliennes*, Paris, Ed. du Seuil, 2003 (1997), pp. 133-184, p. 144.

[29] Anthony GIDDENS, *The Constitution of Society…, op. cit*, p. 169.

and structures are what they are in virtue of their mutual relationship[30]. Structure is always double-edged: it is in the same time the environment in which agency takes place, and the result of agency. Through this approach, we are able to include structure into agency, because structures are produced and reproduced through agency. It is the view supported by the theorists of the social construction of reality: "…the relationship between man, the producer, and the social world, his product, is and remains a dialectical one. That is, man (…) and his social world interact with each other. The product acts back on the producer"[31]. We must thus see how the Foreign Office personnel is constructing the institutions, taking into account what we already know from the first stage of the empirical research, and how their habitus is transformed through contact with the institutions.

But there is a third stage of the transformation of actors' habitus. We should now take into account the mechanisms through which it is modified through socialization in the international environment. By the nature of their work, foreign policy decision makers have a lot of contacts with their foreign homologues. And, as research on socialization largely shows, this interaction has often property effects (not only behavioral effects[32]) on the actors. This stage is essential for understanding how change takes place in foreign policy behavior: if the interaction between agents and structures was a closed process, we wouldn't be able to explain change and evolution of the institutions, and of policy-making itself. Change and evolution are possible in two cases: penetration of new-

[30] This type of relationship is detailed by Alexander WENDT, *Social Theory of International Politics, op. cit.*, p. 25.

[31] Peter L. BERGER, Thomas LUCKMANN, *op. cit.*, p. 78.

[32] For the difference between behavioral and property effects, see Alexander WENDT, *Social Theory of International Politics op. cit.*, p. 26. The difference is also made by Checkel, who refers to behavioral effects as "simple learning" and to property effects as "complex learning" (Jeffrey T. CHECKEL, "Norms, Institutions and National Identity in Contemporary Europe", *loc. cit.*).

comers, with a different habitus, in the system, and socialization in other types of environment, through which actors learn norms, values, beliefs and practices that might transform institutions. The first case can be verified through a research on the degree of elite circulation. For the second case, we have to develop and verify a comprehensive theory of the effects of socialization.

The central issue that must be addressed is: how does learning and internalization take place in the socialization process? This issue was at stake in recent constructivist work in IR. It is an obvious fact that international organizations are imposing to member states or candidates certain criteria for membership, often reinforced through political or economic sanctions. Do national decision-makers implement these norms only by compliance, or are their habitus and their interests *transformed* by the internalization of these norms?

On the other hand, the concepts of "learning" and "internalization" are not very easy to verify empirically. How can we distinguish between learning and compliance motivated by strategic calculation? According to Jack Levy, learning is "a change of beliefs (…) or the development of new beliefs, skills, or procedures as a result of the observation and interpretation of experience"[33]. Moreover, we are interested in learning inasmuch as it is effectively translated into policy, and the author quoted above argues that this is not always the case[34]. The constructivist studies on socialization show that learning followed by internalization is the most difficult to achieve. There are several variables that might facilitate or slow this process. The most important is the matching between the political culture of the elites that undergo the process of socialization and the new norms they're getting contact with, and the historical heritage of the elites[35]. This is influencing the capacity of actors to learn new norms and ideas.

---

[33] Jack S. LEVY, "Learning and Foreign Policy: Sweeping a Conceptual Minefield", in *International Organization*, vol. 48, no. 2, spring 1994, pp. 279 – 312, p. 283.

[34] *Ibidem*, p. 283.

[35] Jeffrey T. CHECKEL, "International Institutions and Socialization", *loc. cit.*

Another variable is the degree to which norms are taken up by national elites. First, elites might conform to international requirements because of constraints, without internalize the norms. A second degree would be learning through coercion, what Ikenberry and Kupchan call "socialization through hegemonic power"[36]. The authors argue that the hegemonic powers are exerting influence on "secondary nations" through manipulation of material sanctions and elites socialization[37]. This type of influence is powerful than simple coercion, but does not reach the degree of intensity of socialization with learning and internalization. The mechanisms through which this influence takes place are diplomatic contacts between countries, external pressure (through which policy change happens *before* internalization of norms) and internal reconstruction (when the hegemonic power directly intervenes in the process of political and institutional reconstruction of the secondary nation). We can identify all these three types of influence in the case of the CEECs. But there are several constructivist theorists who argue that learning can take place in the absence of coercion. The mechanism is detailed by Risse, Ropp and Sikkink, who emphasize the moral awareness of national elites which leads to internalization of human rights norms[38]. Even though norms don't perfectly fit into the former habitus of elites, they might nevertheless be learnt, and this to their best interest: "norms may also 'teach old dogs new tricks', as they help agents discover or learn what, precisely, their preferences are in the first place. When these agents are state elites, such learning may re-empower them as well, as their cognitive horizons expand…"[39].

---

[36] G. John IKENBERRY, Charles A. KUPCHAN, "Socialization and Hegemonic Power", in *International Organization*, vol. 44, no. 3, summer 1990, pp. 283-315.

[37] *Ibidem*, p. 283. These two instruments of influence might be superposed on Joseph Nye's *hard power* and *soft power*. (Joseph NYE, "The Changing Nature of World Power", in *Political Science Quarterly*, vol. 105, no. 2, summer 1990, pp. 177-192).

[38] Thomas RISSE, Stephen ROPP and Kathryn SIKKINK (eds.), *The Power of Human Rights*, *op. cit.*

[39] Jeffrey T. CHECKEL, "International Institutions and Socialization", *loc. cit.*

After having internalized the norms, agents behave according to a *logic of appropriateness*[40], as opposed to a logic of consequences which supposes a rational calculation of interests. This leads to predictable foreign policy behavior and to conformity to mutual expectations: this is exactly what we often see in the case of the CEECs. Thus, the socialization of national foreign policy elites in international environments leads to two types of results. On the one hand, the actors having undergone this process probably internalized the logic of appropriateness, and are likely to prefer co-operative foreign policy behavior. On the other hand, they bring into national Foreign Ministries this newly acquired logic, thus modifying institutions in accordance with it. In this final stage of the interaction between agents and structures, agents can *consciously* act upon the institutions, in order to transform them according to the models they've learnt. Actors can re-create national institutions, bringing change to the policy-making habitus.

Methodology

Thus, by understanding the transformations undergone by the foreign policy elites, we are likely to understand their decisions and the foreign policy of CEECs. The types of methods used to verify our hypotheses are different for each of the stages of our model. First, we must decide upon the group of officials to be studied in this research, taking into account influence in the decision-making and reasons of feasibility, as we are aware of the fact that a research focus on all the Foreign Ministries personnel is impossible. We think that ministers of foreign affairs, secretaries of State and ambassadors in the western countries from all the terms of office have the main influence in decision making, and that we can limit the research to this group. The choice of ambassadors in the western countries is motivated by the fact that we are dealing with the thickest environment in terms of

[40] James C. MARCH, Johan P. OLSEN, "The Institutional Dynamics of International Political Orders", in *International Organization*, vol. 52, no. 4, autumn 1998, pp. 943-969.

norms, but also by the fact that the foreign policy objectives of the CEEs are mainly directed to these countries.

The empirical research must focus on the reconstitution of biographies of the persons in the selected group, in order to allow us to construct a general portrait of the decision-maker, with his social origins, education and types of capital. This research will also show their professional trajectory and their formation in the Ministry. For the second stage of the model, which regards the mutual construction of agents and institutional structures, we have to conduct a different type of research: here, we must see the institutional reforms in the Foreign Ministries and study the evolution of the foreign policy discourses in time. This is why participant observation would be a more useful technique. In-depth interviews with our subjects will emphasize the way in which they perceive the evolution of their foreign policy vision, but also their contact with the international environment, its influence upon them and the way in which they contributed to the transformation of institutional practices in their national settings. Last, but not least, question on how subjects perceive the national interest are essential for understanding the changes produced by the socialization process: if this perception is significantly different in the first years after the fall of communism and nowadays, we might assert that there has been a change in beliefs, norms and values, which can be attributed to socialization. The method suggested by Checkel to document socialization is process-tracking[41]. It consists of a triangulation of three different techniques. The first is the interview, which will help to detect how actors perceive their own evolution and the norms and values they think they have learnt through socialization. The second is a study of the evolution in time of the public discourse of foreign policy officials. Finally, the third is always based on discourse analysis, but this time we will focus on official documents of foreign

[41] Jeffrey T. CHECKEL, "International Institutions and Socialization", *loc. cit.*

policy, in order to see if and how the norms and values learnt through socialization are translated into policy outcomes.

The interdisciplinary character of this research is visible in the combination of approaches taken from sociology, political science and international relations.

Falsification

A final important issue that we would like to address is that of the possibility to falsify the model. We will pick, on the one hand, the empirical method, which is the confrontation of our model to empirical data; on the other hand, we can use a theoretical method, comparing our model with other possible explanations for foreign policy behavior.

The empirical method might also be thought of in the terms of the mathematical method of contradiction. Put it another way, it consists of asking ourselves what happens if our model is not applicable. Thus, the model won't hold if one of the following propositions proves true:

- the structures, the institutions – among which the organization, decision-making procedures, types of discourse etc – of the Foreign Ministries remain unchanged from 1989 to nowadays;
- the actors do not undergo a formative process once employed by the Ministry or they don't acknowledge or show the influence of this formative process, in the case they underwent it;
- the foreign policy discourse is not globally coherent for the Foreign Ministry personnel at a certain moment of time;
- we cannot identify in the Foreign Ministries institutionalized practices or know-how taken up from abroad;
- after the socialization in the international environment, the actors modify their behavior, but they do not internalize norms;
- the socialization process does not modify the discourse, behavior, beliefs, ideas and values of actors.

If one of these sentences is verified, we'll be obliged to modify our model so that it better fits the reality.

Conclusions

The model that we've constructed is not explaining all the aspects of foreign policy behavior in the CEECs. But it catches some of the most important features of these foreign policy apparatuses and it addresses some crucial issues such as elite circulation, incrementalism or foreign influences through socialization. Thus, if the compliance to international norms of co-operation can easily be explained through socialization (with or without coercion), paradoxically, the most "revolutionary" choices of policy, such as the support for the American intervention in Iraq or the agreements of non-extradition of American citizens prosecuted by the International Criminal Court can be explained through incrementalism: the foreign policy apparatus inherited an institutional habitus which approaches foreign policy always in terms of a zero-sum game, of confrontation and security concerns; in this logic, it is always preferable to bandwagon with the major power in the system, without taking into account the economic risks of doing this[42].

With the accession to the EU and NATO, the CEECs have less and less space of maneuver in the foreign policy field and they will be more prone to act according to a logic of appropriateness. This is why the socialization dimension of our model becomes more powerful in time, while the habitus component tends to be less important, as the personnel of the former apparatus of foreign policy are either removed from the system, or socialized to new norms and practice. But the model might prove useful for the study of the

[42] Daniel Barbu documented the fact the elites of countries such as Romania are still conceiving the international system in the dichotomic terms of the Cold War; see Daniel BARBU, « Une paix inconditionnelle: La ville sise au sommet et les barbares après la chute du communisme », paper presented at the conference «Europe - Etats-Unis: Quelle justice politique dans les relations internationales?", Free University of Brussels, 17-18 March 2005.

countries at the borders of the EU, ant we mainly think of the former Soviet Republics. In this case, the model should nevertheless be transformed in order to include references to the strong relationship between all these countries and Russia.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

CITOYENNETÉ, IDENTITÉ ET MIGRATION DANS L'UE : UNE PROPOSITION POUR L'INCLUSION DÉMOCRATIQUE DES RÉSIDENTS DE LONGUE DURÉE DES ETATS TIERS

Alice Gyémánt-Selin*

Abstract

The object of this article is to examine how the new paradigm of multi-level, postmodern or disaggregated citizenship can be applied to the European construction and if such a design facilitates the democratic inclusion of the long-term resident third country nationals in the European Union. The article analyzes several scenarios of democratic inclusion of long-term resident third country nationals in the EU and proposes a solution. The dilemma of citizenship in Europe is related to the internal dynamics of the EU, determined by the European citizenship, and to the external dynamics of globalization, the phenomenon of transnational migrations. The first section examines the evolution of the concept of citizenship, the current revision of this concept and the possibility of a change of paradigm. In a second part, we will make a comparative analysis of the legal status of the European citizens and of the long-term residents third country nationals, particularly of the fundamental, complementary and derived political rights, such as they are defined in the EU legislation and in the national legal orders. Finally we will identify and compare three possible solutions of democratic inclusion. The first scenario proposes a separation of the principle determining the European citizenship from the nationality of the Member States. This scenario implies basing the European citizenship on the residence in the European Union. The second solution puts forward a fragmentary inclusion by the attribution of the political rights of the European citizens to all the residents of Non-member states. The third solution aims at a perfect inclusion by the extension of the European

* Andreea Alice Gyémánt-Selin est doctorante auprès de l'Institut Européen et de la Faculté de Lettres de l'Université de Genève.

citizenship via the national citizenship. We examine the impact of these three scenarios of democratic inclusion on the national citizenship and the European democracy. Based on this analysis we will make a proposal for the implementation of the political rights of the long-term resident third country nationals and we will determine the conditions for the attribution of these rights.

Introduction

L'Union européenne est confrontée aujourd'hui à une immigration massive[1]. Un nombre important de nationaux provenant des Etats tiers, ayant consolidé leur statut de résidence dans un Etat membre et y ayant établi le centre de leurs intérêts économiques, professionnels et personnels, sont exclus du statut de citoyenneté nationale et, par conséquent, de la citoyenneté européenne qui lui est complémentaire[2]. Ce phénomène contribue à l'exacerbation du clivage entre l'appartenance sociale et politique en Europe[3].

Le dilemme de la citoyenneté en Europe est le fruit des enjeux posés par le phénomène global de migration et il est réactualisé suite à l'émergence de la citoyenneté européenne. La migration constitue une des lignes de ruptures qui récusent la liaison conceptuelle entre la citoyenneté et la nationalité. La mobilité accrue des populations en Europe produit une séparation entre deux types d'appartenance qui,

[1] En 2003 sur le territoire de l'UE seulement un pourcentage de 1,5% de la population européenne était constitué par les résidents des pays membres par rapport à un pourcentage 3,4%, qui indiquait les résidents provenant des pays tiers. Maarten VINK, "Limits of European Citizenship: European integration and Domestic Immigration Policies", Constitutionalism Web-Papers, ConWEB no.4, 2003, http://www.les1.man.ac.uk/conweb/, p.9.

[2] Toute personne ayant la nationalité des Etats membres est citoyen de l'Union. Cela est prévu à l'article 17 du Traité de Rome instituant la Communauté européenne (TCE).

[3] Rut RUBIO MARIN, "Equal Citizenship and the Difference that Residence Makes", dans Massimo LA TORE (éd.), European Citizenship. An Institutional Challenge, La Haye, Kluwer Law International, 1998, p.204.

traditionnellement, se superposaient : la citoyenneté et le statut de membre dans une communauté sociale[4]. La migration réitère la tension entre le nationalisme (qui conçoit la nation comme un ethnos, une langue commune ou une culture partagée) et la démocratie qui est fondée sur l'idéal de l'association volontaire et les droits universels de l'homme[5]. Nous remarquons également une séparation entre les dimensions civiles, sociales et politiques de la citoyenneté dans laquelle la première et partiellement la deuxième sont détachées de l'acquisition du statut formel de la citoyenneté et attachées au statut de la personne. Les migrations remettent en question la conception qui associe la citoyenneté et "le droit d'avoir des droits ".

Signé le 7 février 1992, le Traité sur l'Union européenne introduit la citoyenneté européenne (article 8) comme un symbole du passage d'une communauté économique vers une union politique(article A). Les droits électoraux de la citoyenneté européenne désarticulent partiellement la participation politique de l'acquisition du statut de citoyen. Les citoyens européens bénéficient des droits politiques en restant des étrangers dans les Etats membres où ils résident ; cela semble indiquer que les Etats membres acceptent la revendication normative que les *polities* doivent inclure dans le corps politique, au moins au niveau local, au nom de la protection des droits de l'homme et de la démocratie, les résidents étrangers ayant des liens substantiels avec leurs pays de résidence. Permettre aux citoyens européens d'exercer des droits politiques dans l'Etat membre de résidence, tout en niant ces droits aux résidents tiers, qui vivent et travaillent à l'intérieur de l'Union, est contraire à

---

[4] Ibid., pp.203-204.

[5] Sur la tension entre nationalisme et démocratie voir Sheila BENHABIB, The Claims of Culture. Equality and Diversity in a Global Era, Princeton et Oxford, Princeton University Press, 2002; Jurgen HABERMAS, " Citizenship and National Identity ", dans VAN STEENBERGEN (éd.), The Condition of Citizenship, Oxford, 1994, pp.24-8; Jean HAMPTON, Political Philosophy, Oxford, Westview Press., 1997, Ch.6.

l'importance de l'autonomie et au principe démocratique d'égalité. La citoyenneté européenne renouvelle le débat autour des critères et des procédures d'acquisition de la qualité de membre d'une communauté politique, en le déplaçant dans la sphère conceptuelle supranationale mais en conservant l'objet de contestation, à savoir le critère de nationalité nationale.

L'objet de cet article est d'examiner plusieurs scénarios de l'inclusion démocratique des résidents d'Etats tiers dans l'UE et de proposer une solution. Les arguments politiques et moraux en faveur de l'inclusion démocratique des migrants tiers sont traités brièvement en raison des limites d'espace[6]. La première section examine l'évolution du concept de citoyenneté, la révision actuelle de ce concept et la possibilité d'un changement de paradigme. Dans une deuxième partie, nous allons faire une analyse comparée du statut juridique des citoyens européens et des résidents tiers, plus particulièrement des droits politiques, dans le droit communautaire et les droits nationaux. Finalement nous allons identifier et comparer trois solutions possibles d'inclusion démocratique. La première propose de fonder la citoyenneté européenne sur la résidence dans l'Union européenne. La deuxième solution met en exergue une inclusion fragmentaire par l'attribution des droits politiques des citoyens européens à tous les résidents d'Etats tiers. La troisième solution vise une inclusion parfaite par l'extension de la citoyenneté européenne via la citoyenneté nationale. Nous examinons l'impact de ces trois scénarios d'inclusion sur la citoyenneté nationale et la démocratie européenne. Suite à cette analyse nous ferons une proposition pour la mise en œuvre des droits politiques des résidents d'Etats tiers et nous allons déterminer les conditions d'exercice de ces droits.

---

[6] Pour une analyse plus détaillée de cette question voir Alice GYEMANT-SELIN, Citoyenneté européenne et inclusion. Fondements, nature et étendue des droits politiques des résidents de longue durée d'Etats tiers dans l'UE , Mémoire DEA à l'Institut Européen de l'Université de Genève, 2004, Ch. 2.

Le paradigme moderne de la citoyenneté

La citoyenneté consiste dans la qualité de membre et de participant d'une communauté politique. La nature du concept de citoyenneté est extrêmement complexe, sa "plasticité "[7] lui permettant d'intégrer des éléments d'universalisme et de différence. Nos concepts actuels de citoyenneté sont fortement influencés par leur attachement au site théorique de l'Etat[8] et, par cela, ils sont étroitement associés aux concepts de démocratie (le *demos* du régime démocratique étant constitué de l'ensemble des citoyens), de souveraineté populaire (la nation étant le sujet politique), de nationalité, d'appartenance ou d'identité nationale ainsi que du nationalisme.

Actuellement la citoyenneté et la nationalité sont liées du fait que l'acquisition de la citoyenneté dépend de l'acquisition du statut de sujet de l'Etat ou de la nationalité. La congruence de la nationalité et de la citoyenneté est déterminée par l'expansion, au 18ème siècle, de la démocratie et de la citoyenneté démocratique qui signifie l'extension à tous du droit de participer à la vie politique de la communauté. Cette distinction entre sujet et citoyen se retrouve actuellement mise en question par le phénomène d'immigration et par la citoyenneté européenne. Un grand nombre de résidents nationaux des Etats tiers, dépourvus de droits de participation dans les décisions politiques, qui les affectent également, constituent une catégorie croissante de sujets. Cela crée une tension entre la nationalité et la citoyenneté démocratique.

Dès la fin du 18ème siècle, la citoyenneté démocratique et le nationalisme s'associent. La citoyenneté se fonde alors sur une identité forte. La nation a largement contribué à la création des liens de solidarité et pour motiver la mobilisation et la participation

---

[7] Jo SHAW, "The Interpretation of European Union Citizenship ", Modern Law Review,No.3, Vol.61 1998, p.296.

[8] Pourtant la citoyenneté n'est pas traditionnellement liée à l'Etat, elle est née avant l'Etat, dans la cité grecque et signifiait alors la qualité de membre actif de la communauté politique. La citoyenneté est ainsi initialement associée à un espace symbolique et seulement ensuite, avec l'apparition d'un Etat à un espace territorial.

citoyennes qui, à leur tour, sont essentielles à la création de la démocratie[9]. Cependant, le *demos* ne préexiste pas toujours à l'avènement d'un régime démocratique. La constitution sert à constituer le *demos* autant que le *demos* sert à constituer l'Etat.

Ils existent deux conceptions différentes de la nation. L'attribution de la citoyenneté est étroitement liée à la manière dont est conçue la relation entre la citoyenneté et la création de la communauté politique. Si la nation présuppose une culture commune pré-politique ou l'appartenance sur la base de la descendance, l'ethnie devient un critère d'exclusion. Par contre, la conception selon laquelle la nation est constituée par un *demos* et la communauté politique par l'exercice politique facilite considérablement l'accès à la citoyenneté[10]. Le caractère politique des identités et des institutions nationales est ainsi perçu comme étant plus "élastique "[11].

L'association entre le concept de démocratie et le concept de citoyenneté est également liée à l'aspect d'inclusion/exclusion de la citoyenneté. Les citoyens bénéficient des droits et des obligations exclusifs. Dans la tradition occidentale, le peuple a toujours été identifié en relation avec l'autre, l'étranger, du fait que l'essence même du peuple réside dans sa capacité de distinguer entre l'ami et l'ennemi[12].

Par conséquent, le concept de citoyenneté intègre trois composants distincts : un principe politique démocratique, traduit par la participation des citoyens aux délibérations ainsi qu'au

---

[9] Jurgen HABERMAS, Berlin Republic: Writings on Germany, Lincoln, University of Nebraska Press, 1997, p.171.

[10] Ulrich PREUSS, " Citizenship and Identity: Aspects of a Political Theory of Citizenship ", dans Richard BELLAMY, Vittoria BUFACCHI et Dario CASTIGLIONE (éds.), Democracy and Constitutional Culture in the Union of Europe, Oxford et Londres, Lothian Foundation Press, 1995, p.107.

[11] David JACOBSON, Rights across Borders Immigration and the Decline of Citizenship, Baltimore et Londres, The Johns Hopkins University Press, 1997, p.10.

[12] Carl SCHMITT, The Concept of the Political, New Jersey, Rutgers University Press, 1976, p.49.

processus de prise de décision ; le statut juridique qui concerne la capacité du sujet de revendiquer ses droits et la protection de l'Etat ; l'appartenance à une communauté qui confère à l'individu un statut social et un pôle d'identification. La synthèse de ces trois éléments, traduite par trois catégories de droits – civils, sociaux et politiques, est articulée dans le paradigme moderne de la citoyenneté de Marshall[13]. Ce caractère inclusif, uniforme et égalitaire de la citoyenneté réalise une égalité de fait entre les sujets de la *politie* et engendre des effets importants sur les identités sociales et l'intégration des citoyens.

Il importe de souligner le décalage entre ce paradigme et l'évolution du concept de citoyenneté. Cette conception privilégie l'inclusion et l'égalité entre les membres d'une communauté politique sur la base d'une conception de l'identité culturelle du *demos*, constituée en tant que nation, sans questionner ce dernier présupposé[14]. La citoyenneté est exclusive et, par cela, elle institutionnalise des droits dont bénéficient les membres d'une communauté politique, et dont les résidents étrangers sont exclus. Deuxièmement, en proposant une définition large de la citoyenneté, qui incluent les trois catégories de droits, cette conception opère une confusion entre le statut exclusif de citoyenneté et le statut de la personne ou les droits de l'homme, qui est inclusif et possède une nature supranationale, permettant la protection des droits à l'intérieur et à l'extérieur de l'Etat[15]. Dernièrement, cette unité conceptuelle est contingente, les divers composants de la citoyenneté entrent souvent en conflit et chaque synthèse historique implique

---

[13] T.H. MARSHALL, Class, Citizenship, and Social Development, Garden City, New York, Doubleday, 1964.

[14] Veil M. BADER, "Citizenship of the European Union. Human Rights, Rights of Citizens of the Union and of Member States ", Ratio Juris, No.2, Vol.12 1999, pp. 160-161 ; Jean L. COHEN, " Changing Paradigms of Citizenship and the Exclusiveness of the Demos ", International Sociology, No.3, Vol.14 1999, p.252.

[15] Luigi FERRAJOLI, " Dai diritti del cittadino ai diritti della persona ", dans Danilo ZOLO, La Cittadinanza, Rome, Laterza, 1994, pp.265-266.

une négociation et un choix qui détermineront la prééminence d'une composante sur les autres[16]. Ainsi, la théorie politique républicaine distingue entre le nationalisme civique et celui ethnique et propose de détacher les conditions d'accès à la citoyenneté des critères ethniques et de privilégier une citoyenneté civique et ouverte, basée sur un patriotisme civique[17]. Si les possibilités de découpler la citoyenneté de l'ethnos et de du nationalisme sont souvent explorées, les limites de cette séparation sont surtout négligées[18].

Révisions conceptuelles de la citoyenneté

L'impact de la citoyenneté européenne sur le concept de citoyenneté

L'avènement de la citoyenneté européenne questionne la possibilité de concevoir les citoyens sans Etat et également sans nationalité, identité nationale et nationalisme. La citoyenneté européenne ne repose pas sur l'idée de nation européenne qui n'existe pas ou sur l'idée de nationalisme européen, la question de l'allégeance en Europe ou plutôt de son modèle théorique, faisant l'objet de débats théoriques divers. La question de la citoyenneté et implicitement de la démocratie dans l'UE est compliquée par le fait que l'UE ne fait pas référence à la souveraineté populaire d'un *demos* unique comme source d'autorité. Même s'il n'existe pas une nationalité européenne, la citoyenneté européenne est attachée à la nationalité des Etats membres. Elle apparaît ainsi comme étant complémentaire à la nationalité et à la citoyenneté nationale.

La relation entre l'identité européenne et les identités nationales peut acquérir un caractère conflictuel ou pas en fonction de la conception de nationalisme qui est utilisée[19]. Selon la conception de la nation comme une unité organique, culturelle, la

[16] Jean L. COHEN, "Changing Paradigms of Citizenship and the Exclusiveness of the Demos", p. 248.

[17] Hannah ARENDT, On Revolution, New York, Penguin, 1963.

[18] Veil M. BADER, "Citizenship of the European Union." p. 156.

[19] Anthony D. SMITH, "National Identity and the Idea of European Unity", International Affairs, No.1, Vol. 68 1992, p.56.

relation entre l'identité européenne et les identités nationales est celle d'une incompatibilité mutuelle. Par contre, le conflit est minimisé si la nation est conçue comme une association rationnelle et une culture civique commune.

Avec l'ouverture des droits politiques au niveau municipal et européen pour les citoyens européens résidents, il se produit également un détachement partiel entre la citoyenneté et la nationalité nationale, de ce que les résidents étrangers européens peuvent influer sur la politique de l'Etat européen dans lequel ils résident. La diminution de l'exclusivité de la prérogative politique des citoyens nationaux et la généralisation de la liberté de circulation pour les non-citoyens représentent les déviations les plus visibles du paradigme de la citoyenneté nationale.

Vers un nouveau paradigme de la citoyenneté ?

En vue de l'impact actuel de la globalisation[20] et de l'intégration régionale, il devient possible de contester empiriquement la conception selon laquelle l'Etat est actuellement une totalité souveraine, close, autosuffisante et capable d'exercer un contrôle uniforme sur son territoire, tout en rejetant les fortes conceptions sur la globalisation selon lesquelles la souveraineté étatique est dépassée[21]. Ainsi la citoyenneté garde un statut important mais l'image du *demos* comme un sujet collectif homogène et unifié n'est plus convaincante. En effet, certaines présuppositions de base de l'ancien paradigme, comme sa composante démocratique ou sa dimension identitaire, peuvent être adaptées afin de permettre la théorisation d'un nouveau paradigme de la citoyenneté qui soit plus

[20] J'utilise la définition de la globalisation proposée par Cohen: "Globalization involves a major intensification of transnational economic exchanges and competition, of communications, of migration and of social and cultural interactions, all made possible by key technological advances". Jean L. COHEN, "Changing Paradigms of Citizenship and the Exclusiveness of the Demos", p. 245.

[21] Ibid. pp. 257-262; Veil M. BADER, "Citizenship of the European Union.", pp.162-164.

approprié aux nouvelles formes d'organisation politique à plusieurs niveaux de gouvernance, comme l'UE[22]. Le concept de citoyenneté "post-moderne, désagrégée"[23], "à plusieurs niveaux, plurielle"[24] permet d'accommoder l'exclusivité du *demos* avec les exigences de justice envers les étrangers qui désirent devenir des membres de cette *politie*. La tension entre démocratie et droits de l'homme sera ainsi diminuée sans être abolie.

Ce paradigme abandonne la conception unitaire et uniforme de la citoyenneté pour une conception selon laquelle les trois composantes sont protégées par des souverainetés légales et des instances politiques distinctes. Tout d'abord, c'est grâce à la désagrégation des droits de la personne des droits de la citoyenneté que l'opposition entre citoyen et étranger s'est diminuée, permettant une séparation entre l'élément d'identité et une partie des droits de la citoyenneté. Non seulement les développements futurs peuvent permettre de réduire la tension entre les principes de justices et l'exercice démocratique mais ces deux principes peuvent se renforcer mutuellement. Le modèle de citoyenneté désagrégée permet d'échapper à l'opposition entre, d'une part, la conception républicaine d'une citoyenneté civique et, d'autre part, la conception libérale cosmopolite.

Etant donné la tendance des conceptions organiques et même civiques de la citoyenneté (où l'identité est conçue comme étant ouverte à une constante interprétation) d'acquérir une connotation et une identité "dense " et culturelle avec le temps[25], cette conception désagrégée de citoyenneté renonce abdique à la réalisation de la synthèse des trois éléments à un niveau unique. C'est pour cela que

---

[22] Jean L. COHEN, "Changing Paradigms of Citizenship and the Exclusiveness of the Demos", p. 251.

[23] Ibid., p.263.

[24] Veil M. BADER, "Citizenship of the European Union ", p.154.

[25] Ibid., p.256, contre Jurgen HABERMAS, " Citizenship and National Identity : Some Reflections on the Future of Europe ", dans Ronald BAINER (éd.), Theorizing Citizenship , Albany, New York, Suny Press, 1995.

ce paradigme refuse toute stratégie de remplacement[26] du niveau national par un niveau supranational ou global. Cette conception se distingue, en même temps, de la conception libérale cosmopolite qui privilégie la composante juridique de la citoyenneté. La citoyenneté ne peut pas se concevoir de manière uniquement juridique, en ignorant la participation démocratique, l'identité symbolique et la légitimité démocratique[27].

Dans ce paradigme désagrégé, le cœur du statut de citoyenneté doit être constitué par les droits politiques. L'important dans ce modèle est que les droits de l'homme ne devraient pas s'appliquer à la citoyenneté afin de permettre aux *demos* nationaux de maintenir une certaine autonomie politique. Il est possible et suffisant que l'attribution de la citoyenneté observe le droit de chaque individu d'être citoyen et le principe de non-discrimination[28].

Selon ce modèle, des identités et des formes de représentation nouvelles peuvent émerger aux niveaux institutionnels supranationaux et ils peuvent contribuer à compliquer les niveaux d'identité et d'allégeance d'une manière salutaire. En effet, nous pouvons concevoir les possibilités de développement et les avantages d'identités multiples seulement en concevant la coexistence des unités politiques quasi-souveraines ou qui partagent la souveraineté, dans lesquelles les citoyennetés se chevauchent au niveau infra-national, national et supranational[29]. Cela ne signifie pas que les identités politiques et les loyautés vont converger ou seront remplacées, à long terme, par une identité unique ; leur potentiel évolutif dépend de leur articulation et leur dialogue productif.

---

[26] Bader critique les stratégies de remplacement de la citoyenneté étatique par la citoyenneté universelle ou par le statut universel de denizenship parce qu'ils perpétuent des conceptions unitaires inadéquates et propose les stratégies de complémentarité productives comme conception alternative. Veil M. BADER, "Citizenship of the European Union", p. 155 et pp.165-167.

[27] Jean L. COHEN, "Changing Paradigms of Citizenship and the Exclusiveness of the Demos", p. 262.

[28] Ibid., p. 262.

[29] Veil M. BADER, "Citizenship of the European Union.", p.158.

Citoyenneté européenne et droits politiques des résidents tiers de longue durée dans l'UE

Nous allons procéder à une analyse comparée du régime juridique de la citoyenneté européenne et de celui des résidents tiers dans le droit communautaire ainsi que dans les droits nationaux, afin de déterminer si la citoyenneté européenne possède un caractère exclusif, une dimension essentielle pour la définition du concept de citoyenneté en général. Les droits politiques fondamentaux, complémentaires et dérivés[30], attribués aux citoyens européens et aux résidents tiers, feront l'objet privilégié de cette partie. Il nous semble ainsi utile d'analyser si les non-citoyens sont exclus des droits attachés à la citoyenneté de l'Union, ainsi que le set des critères qui déterminent l'attribution de leurs droits.

Il apparaît clairement que les raisons, mises en avant dans le débat sur l'attribution des droits politiques aux citoyens européens, ne sont pas exclusivement liées à l'émergence d'une communauté politique supranationale. Ces arguments relèvent particulièrement des principes de participation démocratique. La distinction entre ces deux types d'arguments est apparente chez certains auteurs qui conçoivent les droits politiques des citoyens européens comme des droits de migrants[31] qui préfigurent le principe du suffrage des étrangers afin de promouvoir la démocratie et les droits de l'Homme dans les Etats membres l'UE. Cet argument démocratique, portant

---

[30] Les droits politiques fondamentaux s'articulent de manière classique autour de trois attributs : l'électorat, l'éligibilité et l'accès aux emplois publics. Certains droits dérivés, comme le droit de participer à un référendum trouve place dans les systèmes constitutionnels. Dernièrement, certains droits politiques complémentaires parachèvent la panoplie des droits politiques offerts aux citoyens contemporains. Il s'agit du droit de savoir (le droit d'accéder aux documents administratifs) le droit de recourir à un médiateur ou le droit de pétition. Francis DELPEREE, Les droits politiques des étrangers, Paris, Presse Universitaire de France, 1995, pp. 2-5.

[31] Stephen DAY et Jo SHAW, "European Union Electoral Rights and the Political Participation of Migrants in Host Polities", International Journal of Population Geography, Vol. 8 2002, p.183.

sur un droit général des résidents, est différent de celui de l'émergence d'une collectivité dans l'UE qui pourrait exclure les résidents tiers.

La liberté de circulation et de résidence dans les Etats membres de l'Union (article 18 TCE) constitue le noyau de la citoyenneté européenne. Pourtant ce droit ne constitue pas un attribut exclusif de la citoyenneté européenne. Plusieurs catégories de non-citoyens sont devenues des bénéficiaires du *droit de libre circulation*[32]. Avec la mise en application de la directive 2003/109/CE du Conseil, du 25 novembre 2003, sur le statut des nationaux de pays tiers résidants de longue durée, qui sera mise en application le 23 janvier 2006, ces derniers en sont également les bénéficiers. L'objectif de la proposition est d'harmoniser la législation et la pratique nationale concernant le statut de résident de longue durée pour les nationaux d'Etats tiers, légalement et durablement installé dans un pays membre, et de fixer les conditions de leur liberté de circulation. La notion de « longue durée » implique une période de résidence de cinq ans, légale et continue (article 3). Le document reconnaît un droit de séjour dans un autre Etat membre, conditionné par l'exercice d'une activité salariale, indépendante ou d'une formation et la possession des ressources suffisantes. Il fournit une première reconnaissance substantielle de la résidence des ressortissants tiers

[32] Par exemple, les épouses des travailleurs retiennent leur liberté de circulation et de résidence après la dissolution du mariage, suite au divorce ou au décès de l'époux, conformément à la proposition révisée de la Commission pour le règlement 1612/68 et la Directive 68/360(Com 88/815 – SYN 185 (29 mars 1989). Ce droit est également développé par la jurisprudence récente de la Cour ("Carpenter" et "Baumbast/R"). Les résidents d'Etats tiers, membres de la famille des travailleurs migrants se voient attribué des droits de libre circulation et résidence qui, dans la plupart des cas, sont découplés de leur source initiale, l'association avec le travailleur migrant. Ainsi les membres de la famille peuvent acquérir une forme réduite de citoyenneté. Norbert REICH et Solvita HAEBACEVICA," Citizenship and family on trial: A fairly optimistic overview of recent court practice with regard to free movement of persons", Common Market Law Review, Vol. 40 2003, p. 619.

en tant que composante indispensable de l'évolution sociale, politique et économique de la Communauté.

Cet élargissement de la liberté de circulation est à la base de la proposition de détacher la liberté de circulation de la citoyenneté européenne[33]. La liberté de circulation deviendrait ainsi un droit des résidents dans l'UE. La directive du Conseil semble faire un pas dans cette direction.

Les droits de pétition devant le Parlement Européen et le droit de recourir au médiateur (contenus dans l'article 21 TCE) ne peuvent pas être considérés au profit exclusif des citoyens européens. Le ressortissant extra communautaire, tout comme le citoyen européen, est titulaire d'un droit de contrôle, minimal mais réel, sur les institutions communautaires. Le concept de résidence constitue déjà un critère d'allocation des droits politiques complémentaires. Toute personne physique ou morale qui réside ou qui a son siège sur le territoire d'un Etat membre bénéficie du droit de pétition (article 194 TCE) et du droit de d'adresser au médiateur européen (article 195 paragraphe 1 TCE).

Le droit de protection diplomatique et consulaire (article 20 TCE), ainsi que le droit de vote et l'éligibilité aux élections municipales (article 19 paragraphe 1 TCE)[34], et le droit de vote et

---

[33] Marie-José GAROT, "Citizenship and European Integration, ", Thinking Outside the Box Editorial Series, Paper 9, 2003, p.2.

[34] Le Rapport de la Commission de 1986 sur le droit de vote des nationaux communautaires dans les élections municipales (Supplement 2/86 – Bull EC) la Directive de la Commission portant sur la participation à ce type d'élection de 1988 (OJ 1988, C 246/3) considéraient que, contrairement aux élections nationales qui relèvent de la souveraineté nationale, les élections municipales n'influençaient pas sur la souveraineté de l'Etat et devraient, ainsi, être accessible aux étrangers. Dans l'exposé des motifs de la directive sur le droit de vote local, la Commission rappelle qu'avec la libre circulation, il peut y avoir une discrimination entre citoyens européens et qu'il convient de ne pas leur faire perdre tous leurs droits du fait de leur résidence (Com (94) 33 final, du 23 /02/ 94). Leur accorder le droit de vote dans les élections municipales permettra une meilleure intégration des citoyens européens dans leur Etat de résidence. Soumis aux mêmes obligations que

d'éligibilité aux élections au Parlement européen dans l'Etat membre de résidence (article 19 paragraphe 2 TCE)[35] sont octroyés exclusivement aux citoyens européens. L'ordre juridique et politique communautaire impose certaines obligations aux Etats membres pour mettre en œuvre les droits politiques des résidents communautaires en tant que droits politiques des migrants, basés sur la résidence, et dont l'objectif est l'intégration du migrant dans la société politique de l'Etat membre d'accueil[36]. Cela met en relief le statut incomplet d'un groupe de migrants beaucoup plus large qui est celui des résidents extra-communautaires[37].

Il existe des variations considérables au niveau national en rapport avec les droits de participation politique. Pourtant, ce droit est attribué aux résidents de longue durée par un peu plus de la moitié des Etats membres[38]. L'extension des droits de participation politique au-delà des dispositions communautaires n'est plus exclusivement déterminée par le passé colonial des pays, les affinités géographiques et socio-politiques avec les Etats voisins mais également par des principes démocratiques. De ce fait, le statut de

tous les autres habitants de leur collectivité locale, les communautaires doivent assumer leur co-responsabilité dans les affaires publiques locales.

[35] Dans l'exposé des motifs de la directive sur le vote au Parlement européen (Com (93) 109 final du 27 / 10/93), la Commission montre que ce droit vise à renforcer la légitimité démocratique du Parlement européen et à réduire ainsi le déficit démocratique qui a été souvent dénoncé à propos de la Communauté. Un autre objectif est celui de permettre aux citoyens de l'Union d'exprimer en commun leur sentiment d'appartenance à la construction européenne, tout en gardant leurs identités nationales respectives.

[36] Stephen DAY et Jo SHAW, "European Union Electoral Rights and the Political Participation of Migrants in Host Polities", p.185.

[37] Ibid., p.186.

[38] Pour une analyse plus détaillée de cette question voir Maria SIERRA et Jyostna PATEL, Pour une véritable citoyenneté européenne, Publication du Réseau Européen contre le Racisme, 2001, p.16 ; voir également Andreea Alice GYEMANT-SELIN, Citoyenneté européenne et inclusion. Fondements, Nature et étendue des droits politiques de longue durée d'Etats tiers dans l'UE, Mémoire DEA à l'Institut Européen de l'Université de Genève, 2004, Ch.1.

résident tiers et de résident communautaire dans certains Etats membres est similaire. *La Convention européenne sur la participation des étrangers à la vie publique au niveau local*[39] prévoie également l'attribution des droits politiques actifs et passifs dans les élections locales après cinq années de résidence dans l'Etat d'accueil[40].

Il existe des différences considérables dans les dispositions légales de la nationalité des Etats membres[41]. Pourtant les modifications législatives opérées dans certains Etats membres montre que la législation est en train d'évoluer. Pour la première fois un traité international, *La Convention européenne sur la nationalité*[42], tente d'indiquer les conditions acceptables pour l'acquisition et la perte de la nationalité et offre un espace de coopération entre les

[39] Conclue en 1992, la Convention est entrée en vigueur en 1997. La Convention a été ratifiée par le Danemark, la Finlande, la Suède, l'Italie et les Pays-Bas. La Grande-Bretagne, le Chypre et la Tchéquie ont signé, mais n'ont pas encore ratifié la Convention.

[40] L'article 6 (2) prévoit qu'un Etat signataire peut, au moment de la ratification, confiner les droits politiques au droit de vote uniquement. L'attribution des droits politiques constitue un dernier stage de l'intégration politique, auquel les Etats signataires peuvent décider de ne pas participer.

[41] La période de résidence est de cinq ans en Autriche, France, Irlande, Pays-Bas, Suède et Royaume-Uni, trois ans en Belgique, sept ans au Danemark, huit ans en Finlande et en Allemagne, dix ans en Grèce, Italie, Luxembourg, Portugal, Espagne. Plusieurs conditions sont attachées à l'acquisition de la nationalité : la capacité de parler la langue du pays d'accueil ; être de bonne vie et mœurs ; prouver qu'ils ne constituent pas une menace pour l'ordre public ; ne pas faire l'objet de condamnation pénale ni d'être endetté ; avoir honoré leurs obligations fiscales ; disposer de revenus suffisants pour subvenir à ces propres besoins. La majorité des Etats membres permettent aux enfants de la première, de la deuxième et de la troisième génération de ressortissants de pays tiers d'obtenir la nationalité. Seulement la Finlande, la Belgique et l'Allemagne n'autorisent pas la nationalité multiple. Maria SIERRA et Jyostna PATEL, Pour une véritable citoyenneté européenne, p.14.

[42] La Convention, initiée par le Conseil de l'Europe et adoptée le 6 Novembre 1997, a été signée par l'Albanie, l'Autriche, la Bulgarie, le Danemark, la Finlande, la Grèce, la Hongrie, l'Islande, l'Italie, les Pays-Bas, la Moldavie, la Norvège, la Pologne, le Portugal, la Roumanie, la Slovaquie, la Suède, la Tchéquie.

Etats partis dans le domaine de la nationalité. Il existe une convergence limitée dans les lois de nationalité des Etats membres, mais nous pouvons discerner une tendance vers une *ius commune* dans ce domaine[43].

Les Etats membres ne détiennent plus le monopole en matière de décisions concernant les règles et les pratiques d'acquisition et de perte de la nationalité. Cela est prouvé par leur congruence vers des normes communes et la tendance d'accepter la nationalité double ou multiple[44]. En assumant un rôle en matière de politiques d'admission, la liberté de circulation, l'insertion et la protection des droits de l'homme dans les législations nationales, la Communauté partage déjà avec les Etats membres les moyens de décider sur la question de l'immigration.

A l'exception de la protection consulaire et, d'une manière moins généralisée, à l'exception des droits politiques fondamentaux, les droits de la citoyenneté européenne sont attribués également à une catégorie limitée de non-citoyens. Cela met en évidence la nature ambiguë de ces droits, qui cessent d'être des droits propres des citoyens, mais ne devient pas pour autant des droits de l'homme en vue de leur attachement à la résidence des bénéficiaires[45].

Stratégies d'inclusion démocratique des résidents de longue durée d'Etats tiers dans l'UE

Les approches que nous envisageons d'analyser afin de répondre au dilemme d'inclusion démocratique des résidents tiers sont guidées par la question de l'égalité de traitement entre les résidents tiers et les citoyens européens. La première approche s'oppose au critère d'attribution de la citoyenneté européenne, la nationalité des Etats

---

[43] Gerard-René DE GROOT, "The European Convention on Nationality: A Step Towards a Ius Commune in the field of nationality law ", Maastricht Journal of European and Comparative Law, No. 2, Vol. 7 2000, p.117.

[44] Veil M. BADER, "Citizenship of the European Union.", p.155.

[45] Roy DAVIS, "Citizenship of the Union… rights for all?", European Law Review, No. 27 2002, p.124.

membres, et propose comme alternative le critère de résidence. La deuxième approche critique l'identification du dilemme de l'inclusion avec le dilemme de la citoyenneté en considérant qu'elle perpétue un modèle communautaire de société politique[46]. Cette approche propose de créer un équilibre entre la promotion de la citoyenneté comme un concept exclusif et le concept d'inclusion démocratique[47]. La troisième approche propose d'étendre la citoyenneté européenne via la citoyenneté nationale.

Dissocier la nationalité et la citoyenneté : redéfinir la citoyenneté européenne

Des auteurs comme Garot, Staples, O'Keeffe, Davis ou Lardy proposent de redéfinir la citoyenneté européenne et de remplacer le critère de nationalité par celui de résidence. Cette dernière est définie comme "le centre d'intérêts personnels et professionnels de la personne"[48]. Comme nous l'avons démontré, le critère de résidence a acquis une signification particulière pour l'attribution de droits dans l'ordre juridique communautaire, tendance parallèle à la diminution du rôle de la nationalité qu'il complète et même remplace parfois.

Deux types d'intégration sont mis en avant par les auteurs qui souhaitent une citoyenneté européenne de résidence : une définition purement légale de la citoyenneté européenne[49] et une intégration calquée sur le modèle étatique, présupposant une identité commune européenne[50]. D'une part, plusieurs auteurs proposent l'attribution

---

[46] Lynn DOBSON, "Constituting which Good and whose Rights?", The Federal Trust for Education and Research, Online papers, No. 16 2003, p. 3.

[47] Jo SHAW, "Citizenship of the Union : Towards Post-National Membership ? ", dans EUI (éd.), Collected Courses of the Academy of European law, Vol. VI-1, La Haye 1998, p. 345.

[48] Marie-JoséGAROT, La citoyenneté de l'Union européenne, Paris, L'Harmattan, 1999, p. 329.

[49] Heather LARDY, "The Political Rights of Union Citizenship", p.629 ; Marie-JoséGAROT, La citoyenneté de l'Union européenne, p. 332.

[50] La liste la plus élaborée des tests de la citoyenneté européenne est proposée par O'Keeffe. Les critères identifiés sont : l'entrée et la résidence légale sur le territoire,

automatique de la citoyenneté européenne après une résidence légale de cinq ans[51]. Cette proposition nous semble résoudre le problème d'inclusion en ignorant le paradoxe de l'inclusion, la tension entre la démocratie et les droits de l'homme. Si la citoyenneté européenne est redéfinie, l'intégration sociale des résidents est assumée, vu le caractère automatique de son attribution. Cette démarche, qui sera basée uniquement sur la logique de la prépondérance du critère de résidence dans le droit européen, introduira un manque de cohérence entre les législations nationales et la législation européenne. Le scénario nous semble aussi inconsistant par sa tendance d'affirmer une primauté de la loi européenne dans la matière.

D'autre part, O'Keeffe propose la mise en œuvre d'un test d'assimilation dans l'Union. L'attachement à l'Union ne comprend pas un lien au pays de résidence, et cela parce qu'il présuppose l'émergence d'une communauté homogène et d'un *demos* unique européen. Cela impliquerait le transfère de la loyauté pour les Etats vers l'Union et la convergence des politiques domestiques vers une culture politique commune européenne. Si la logique d'attribution des droits politiques dans l'UE semble dépasser la logique de la centralité de l'Etat, cette approche semble nostalgique du principe de centralité.

Contrairement à cette vision, l'Union européenne semble plutôt représenter "un nouveau type de communauté politique basée sur la pluralité persistante de ses peuples composants, les *demoi* [52]". L'Union repose sur la reconnaissance des souverainetés et des

l'âge, l'activité économique, la loyauté pour les idéaux de l'Union, l'assimilation (la connaissance linguistique, la connaissance des principes fondamentaux de l'Union, l'attachement à l'Union)50. David O'KEEFFE, " Union Cititzenship", dans David O'KEEFFE et Patrick TWOMEI (éds.), Legal Issues of the Maastricht Treaty, Wiley Chancelly Law, 1994, p. 105-6.

[51] Marie-JoséGAROT, La citoyenneté de l'Union européenne, p. 329.

[52] Kallypso NICOLAIDIS, "The New Constitution as European Demoi-cracy?", The Federal Trust for education and research, No.38, 2003, p. 5.

communautés politiques de ses Etats membres. C'est dans ce sens qu'elle représente une Communauté des Autres, fondée sur la reconnaissance réciproque, la confrontation et d'inclusion mutuelle[53]. Cela implique le rejet des politiques identitaires de type national dans le contexte européen.

La connaissance des principes fondamentaux de l'Union n'est pas requise des nationaux des Etats membres. En effet leur assimilation semble être présupposée[54]. L'attachement européen, dans ce cas, implique le lien au pays membre d'origine. La reconnaissance des différences implique la reconnaissance des multiples *demoi* coexistants. La double citoyenneté, nationale et européenne, est la représentation de cette logique : le national d'un Etat membres, individu résident dans un pays membre différent du pays d'origine, peut participer (partiellement) au corps politique national en restant étranger, au nom de la reconnaissance et de l'ouverture mutuelle des identités et des citoyennetés des différents *demoi*. C'est pour cette raison qu'aucun critère supplémentaire, en dehors des critères attachés à la résidence n'est imposé aux citoyens européens qui exercent leurs droits politiques dans les Etats membres.

Critique de la redéfinition de la citoyenneté européenne: l'avenir "incertain " de la citoyenneté nationale

Deux présupposés sont à la base de cette approche: l'inertie de la citoyenneté nationale et le potentiel démocratique de la citoyenneté européenne indépendamment de la démocratie et de la politique nationale. Le premier présupposé nous semble ignorer les développements récents en matière de nationalité, naturalisation, liberté de circulation, ouverture des droits politiques au niveau local pour les migrants de longue durée dans les Etats membres. Il ignore

---

[53] Ibid., p.5.

[54] Heather LARDY, "The Political Rights of Union Citizenship", European Public Law, 1996, p.629

également le potentiel dynamique et réflexif de la citoyenneté à plusieurs niveaux.

Pour évaluer le deuxième présupposé, nous devons contempler les risques de la redéfinition de la citoyenneté européenne dans la lumière de la dépendance actuelle entre les deux niveaux de démocratie dans l'UE. La *demoi-cratie* européenne ne constitue pas une concurrence entre deux niveaux de démocratie - le niveau européen et le niveau national - mais un équilibre continu entre les deux[55]. Le niveau supranational est légitimé par les solutions qu'elle apporte aux déficits démocratiques nationaux[56]. Le droit de vote des étrangers peut représenter un danger pour une conception ethnique de l'Etat-nation mais non pas pour une conception civique de gouvernement. Il est une condition théorique pour la création non seulement des "sociétés ouvertes" mais aussi des "républiques" ouvertes à l'autonomie des individus[57].

L'imposition par le haut d'une citoyenneté européenne basée sur la résidence menace non seulement la dissociation entre citoyenneté et nationalité, mais aussi la disparition de la citoyenneté nationale tout court. Si les résidents d'Etats tiers vont accéder uniquement à la citoyenneté européenne, ils pourront participer aux processus politiques nationaux, par l'intermède de l'exercice des droits politiques au niveau municipal et au niveau du Parlement européen, sans qu'ils soient pour autant des citoyens nationaux. Il sera difficile pour chaque Etat membre de distinguer clairement

---

[55] Kallypso NICOLAIDIS, "The New Constitution as European Demoi-cracy ? ", p. 8.

[56] Poiares MADURO, Where to Look for Legitimacy, www.ieei.pt/images/articles/674/ /PaperMPM-IEEIucp.pdf., 2003, pp. 23-24. Le droit européen comble le déficit démocratique national en exigeant aux Etats membres d'inclure une forme de représentation des intérêts étrangers qui sont également affectés par ses décisions internes.

[57] Joseph MARKO, "Citizenship beyond the National State? The Transnational Citizenship of the European Union", dans Massimo LA TORRE (éd.), European Citizenship: An Institutional Challenge, la Haye, Kluwer Law International, 1998, p. 385.

entre national et étranger vu l'afflux des citoyens européens, nationaux des Etats membres et des Etats tiers, ayant des droits politiques, même si partiels, dans les Etats membres. La citoyenneté nationale va perdre ainsi son caractère exclusif et elle se dévaluera progressivement. Les participants au processus démocratique national ne seront pas désignés conformément aux critères déterminés par la communauté politique nationale elle-même, mais ils seront surimposés. En absence d'une autodétermination de la constitution du corps politiques la question de la légitimité démocratique des institutions juridiques et politiques nationales se pose également. Ironiquement, le processus de prise de décision politique restera dépourvu de caractère représentatif, mais le corps politique ne sera pas sous-représenté mais surreprésenté.

A l'exception de certains principes généraux, comme le droit universel à la citoyenneté et le principe de non-discrimination, le *demos* doit conserver son autonomie politique et, de ce fait, il doit pouvoir exercer leur compétence d'articuler et de spécifier certains principes et droits de la citoyenneté[58]. Le danger de la séparation entre droits politiques sur le plan national et droits politiques sur le plan européen serait la création de deux classes de citoyens dans les Etats membres: les citoyens européens résidents et les citoyens nationaux qui sont un sous-groupe des premiers[59].

De plus, la spécificité de la démocratie européenne avec ses principes de tolérance, présents dans le couple Eros/civilisation[60], dépend de la coexistence des deux niveaux de citoyenneté. Le remplacement graduel de la citoyenneté nationale par la citoyenneté européenne risque de reproduire au niveau européen le modèle

---

[58] Jean L. COHEN, "Changing Paradigms of Citizenship and the Exclusiveness of the Demos", p.264.

[59] Je remercie à Samantha Besson de m'avoir suggéré cet argument.

[60] Joseph H. WEILER, The Constitution of Europe"Do the new clothes have an emperor" and other essays on European Integration, Cambridge, Cambridge University Press, 1999, p.336-343.

imparfait de la citoyenneté nationale. Cela remettrait également en question l'avenir de la démocratie européenne.

Dissocier la qualité de membre/citoyen et les droits politiques : redéfinir le principe d'inclusion

Ce scénario d'inclusion détache la participation politique de l'acquisition de la citoyenneté. Les droits politiques sont insérés dans un continuum d'inclusion plutôt que confinés dans la dichotomie du statut de membre (oui/non et inclus/exclu)[61]. Cette conception diminue la signification de la citoyenneté formelle, légale et se concentre sur des questions d'appartenance sociale[62].

Dobson propose un concept de citoyenneté quasi-exclusive en niant l'idée que les droits de la citoyenneté ne peuvent pas être étendus aux résidents[63]. A l'exception du suffrage national, la citoyenneté n'est plus actuellement l'unique critère d'accès aux "droits de la citoyenneté"[64]. En s'opposant à l'attribution du statut de citoyen européen aux résidents tiers Dobson refuse le renforcement de la notion de citoyenneté comme un statut privilégié, légitime dans son caractère restrictif. Elle y oppose l'argument que le statut d'être humain de la personne devrait légitimer l'accès aux biens sociaux et politiques, généralement valables dans la société, sans qu'il soit nécessaire d'utiliser le langage de la citoyenneté.

Pourtant cette approche ne préconise pas la disparition du concept de citoyenneté et cela à cause de la l'importance du *demos* pour la démocratie. L'autodétermination ou l'autogouvernance implique un soi collectif définissable afin de déterminer ses frontières et de conserver le pouvoir interne du gouvernement[65]. Ce sont ces

---

[61] Stephen DAY et Jo SHAW, "European Union Electoral Rights and the Political Participation of Migrants in Host Polities", p. 188.

[62] Sheila BENHABIB, The Claims of Culture ; Lynn DOBSON, " Constituting which Good and whose Rights ? ".

[63] Lynn DOBSON, "Constituting which Good and whose Rights ? ", p. 3.

[64] Roy DAVIS, "Citizenship of the Union… rights for all? ", p. 124.

[65] Lynn DOBSON, "Constituting which Good and whose Rights?", p. 4.

arguments qui justifient la restriction de l'extension du droit de libre entrée sur le territoire de la *politie* et l'attribution du droit de vote et de l'électorat aux élections nationales aux citoyens.

Critique de la dissociation de la qualité de citoyen des droits politiques

L'inclusion démocratique fragmentaire des résidents d'Etats tiers, déterminée par le critère légal de la résidence, pose trois problèmes. Un premier problème d'égalité, impliquant le risque d'une dynamique inégale, découle des variations déterminées par deux types de statuts[66]. Les droits des résidents tiers pourraient être limités ultérieurement simplement en vertu du fait qu'ils ont été acquis par un statut différent de celui de citoyen et une évolution du statut de citoyen n'entraînerait pas nécessairement la même évolution du statut des résidents d'Etats tiers. Le concept de citoyenneté européenne a un potentiel évolutif plus important que le statut d'étranger résident : le premier évoque l'appartenance, l'inclusion et les droits tandis que le deuxième statut suggère l'exclusion et les concessions conditionnées.

Le deuxième problème, fortement connecté au premier, est le danger couru par les résidents tiers qui, n'étant pas des membres à part entière de la communauté politique, ne jouissent pas de l'estime publique dont bénéficient les citoyens européens. En effet, en dépit de leur contribution aux objectifs de la communauté, la position des étrangers reste toujours vulnérable parce que leur statut "d'étranger " peut toujours être présenté par certaines fractions politiques comme une menace à la sécurité des citoyens[67]. Dans ce contexte, la relation entre la valeur symbolique de la citoyenneté et l'égalité joue un rôle significatif.

Troisièmement, le statut de citoyen européen sera fortement dévalué par cette dissociation. La composante politique démocratique reste le dernier bastion de droits "exclusifs " de la

[66] Heather LARDY, "The Political Rights of Union Citizenship", p.628.

[67] Ibid., p. 621.

citoyenneté. Si tous les droits de la citoyenneté européenne, à l'exception de la protection diplomatique et consulaire, étaient également attribués aux résidents, la citoyenneté européenne perdrait sa fonction symbolique et, par la suite, son rôle.

Une solution pour l'inclusion démocratique des résidents de longue durée d'Etats tiers dans l'UE : Etendre la citoyenneté européenne via la citoyenneté nationale

Une imbrication entre la citoyenneté nationale et la citoyenneté européenne peut être envisagée afin de résoudre le dilemme d'inclusion démocratique. Cette solution implique une médiation des Etats et une dynamique parallèle dans le sens du passage au critère de la résidence des deux niveaux de citoyenneté. L'accès à la citoyenneté nationale et européenne pour les résidents tiers pourrait être considéré comme la forme la plus avancée de politique d'intégration, parce qu'elle permet de parvenir à une égalité complète de droits entre citoyens.

Le transfert au niveau de l'Union de la compétence de définition du concept de résidence est problématique. Cette compétence devrait être partagée par l'UE et par les Etats membres. Une proposition de naturalisation facilitée pour les résidents de longue durée des Etats tiers, en mesure d'accommoder les différentes conceptions nationales dans la matière, pourrait être faite par la Commission et soumise aux débats des parlements nationaux. Les critères d'intégration devraient être déterminés par les parlements nationaux ensemble avec l'UE. Un minimum d'uniformisation doit être établi, afin d'éviter la disparité dans la reconnaissance des conditions de participation politique. Certains critères minimaux, comme ceux proposés par Cohen, pourraient être recommandés.

L'actuelle convergence limitée en matière de naturalisation n'est pas à l'avenir un obstacle insurmontable en soi. Ainsi que le montre Maduro "l'intégration européenne crée une nouvelle forme de participation démocratique : la liberté de choisir entre différentes démocraties nationales ou le droit de choisir entre différentes

communautés politiques"[68]. En donnant la liberté de choix entre les démocraties nationales, elle génère une compétition entre les différentes démocraties nationales qui améliora le fonctionnement démocratique de chaque *politie* nationale. Cette dynamique pourra déterminer la compétition démocratique qui à son tour engendrera une tendance provenant des Etats membres pour l'harmonisation de la législation dans le domaine.

Une période de résidence légale de cinq ans a été déjà identifiée comme un critère commun par le projet de Directive sur le statut de résidents de longue durée et par la Convention de 1992 sur l'attribution des droits électoraux aux résidents. Cette période de résidence représente également, dans certains Etats membres, la période requise pour la demande de naturalisation. Les ressortissants tiers ne doivent pas représenter une menace actuelle pour l'ordre public et la sécurité intérieure et ils doivent disposer des ressources stables et suffisantes.

La résidence ne pourrait pas constituer l'unique critère à cause du risque de diminuer l'importance de la notion de participation politique qui se serait réduite à un simple accident de la résidence. Afin de rendre le concept de résidence plus exclusif, l'accès à la citoyenneté pourrait être limité sur la base de l'intégration des résidents dans les communautés nationales.

L'intégration dans l'un des *demoi* européens devrait également constituer le critère d'accès à la citoyenneté nationale et européenne. La connaissance d'une culture politique et la maîtrise d'une langue doivent être exigées. Il s'agit à notre avis de la langue et de la culture politique de l'Etat de résidence où l'inclusion se fait d'abord. La Convention européenne sur la Nationalité élabore le critère de maîtrise d'une langue nationale et affirme que ce concept de "connaissance adéquate" devrait être déterminée en rapport avec les circonstances spécifiques de chaque cas. La "connaissance civile" des

[68] Poiares MADURO, Where to Look for Legitimacy, www.ieei.pt/images/articles/674/ /PaperMPM-IEEIucp.pdf., 2003, op.cit., p. 24.

lois et des formes de gouvernement du pays devrait aussi être incluse comme condition d'admission[69]. C'est ce caractère volontaire de l'association et de l'attachement qui devrait primer dans la décision d'octroyer ou non le statut de citoyenneté.

Conclusions

Le phénomène des migrations internationales et l'avènement de la citoyenneté européenne ont révélé la tension entre le nationalisme et la démocratie ainsi qu'entre la démocratie et les droits de l'homme. Si le caractère exclusif de la citoyenneté nationale semble avoir été limité par la citoyenneté européenne, nous devons également envisager les opportunités et les limites qui s'ouvrent pour la citoyenneté européenne mais aussi pour la citoyenneté nationale. La citoyenneté à plusieurs niveaux semble avoir des grandes chances de résoudre cette tension et de « réconcilier » les concepts de résidence et de citoyenneté sans engendrer une dévaluation de cette dernière.

La contestation de l'inclusion des étrangers dans les communautés politiques nationales dérive de l'absence de débats parlementaires nationaux sur la question du traitement préférentiel des citoyens européens, plus spécifiquement sa restriction à une question de compétence où les arguments légaux ont primé sur le débat politique. La légitimation de la citoyenneté européenne sur la base de sa fondation nationale et son but limité détermine l'absence de la reconnaissance du fait que celle-ci mine la division entre le national et l'international. D'ici dérive son rôle arbitraire ou accidentel dans les débats domestiques sur l'immigration.

Nous ne pouvons pas parler actuellement d'une émancipation de la citoyenneté du site théorique traditionnel de l'Etat nation mais l'émergence de la citoyenneté européenne présuppose une conceptualisation de la citoyenneté dans un contexte post-national, et cela n'est pas sans remettre en cause les oppositions entre Nous et les Autres, l'inclusion et l'exclusion. Si les droits électoraux sont présentés

[69] Sheila BENHABIB, The Claims of Culture, p.170.

comme des droits de participation de la citoyenneté, l'extension de ces droits aux résidents sera liée à la mise en place des procédures légales afin de faciliter le processus de naturalisation et la réforme progressive des critères d'attribution de la citoyenneté nationale dans les Etats membres. Ainsi l'intégration linguistique, sociale et économique des individus devrait être perçue comme la condition de leur intégration légale et politique dans les Etats où ils résident, étant censée conduire à l'acquisition de la citoyenneté. Cette approche se rapporte à l'idée que la personne qui prend des décisions doit être le citoyen. Cette inclusion formelle est perçue comme étant cruciale pour la préservation du caractère démocratique de la *politie* européenne.

Bibliographie

1. Arendt, Hannah, *On Revolution*, New York, Penguin, 1963.
2. Bellamy, Richard, "The "Right to Have Rights": Citizenship Practice and the Political Constitution of the EU", dans Richard Bellamy et Alex Warleigh (éds.), *Citizenship and Gouvernance in the European Union*, Londres, Continuum, 2001.
3. Bellamy, Richard et Warleigh, Alex, "The Puzzle of EU Citizenship", dans Richard Bellamy et Alex Warleigh (éds.), *Citizenship and Gouvernance in the European Union*, Londres, Continuum, 2001.
4. Benhabib, Sheila, *The Claims of Culture. Equality and Diversity in a Global Era*, Princeton et Oxford, Princeton University Press, 2002.
5. Delperee, Francis, *Les droits politiques des étrangers*, Paris, Presse Universitaire de France, 1995.
6. Habermas, Jurgen, *Berlin Republic: Writings on Germany*, Lincoln, University of Nebraska Press, 1997.
7. Habermas, Jurgen, "Citizenship and National Identity", dans Van Steenbergen (éd.), *The Condition of Citizenship*, Oxford, 1994.

8. Habermas, Jurgen, " Citizenship and National Identity: Some Reflections on the Future of Europe ", dans Ronald Bainer (éd.), *Theorizing Citizenship*, Albany, New York, Suny Press, 1995.
9. Habermas, Jurgen, *Berlin Republic: Writings on Germany*, Lincoln, University of Nebraska Press, 1997.
10. Habermas, Jurgen, "The European Nation State: On the Past and Future of Sovereignty and Citizenship", dans Ciaran Cronin et Pablo de Greiff (éds), *The Inclusion of the Other*, Cambridge, MIT Press, 1998.
11. Hampton, Jean, *Political Philosophy*, Oxford, Westview Press., 1997.
12. Garot, Marie-José, *La citoyenneté de l'Union européenne*, Paris, L'Harmattan, 1999.
13. Gyemant-Selin, Alice, *Citoyenneté européenne et inclusion. Fondements, nature et étendue des droits politiques des résidents de longue durée d'Etats tiers dans l'UE*, Mémoire DEA à l'Institut Européen de l'Université de Genève, 2004.
14. Jacobson, David, *Rights across Borders Immigration and the Decline of Citizenship*, Baltimore et Londres, The Johns Hopkins University Press, 1997.
15. Marko, Joseph, "Citizenship beyond the National State? The Transnational Citizenship of the European Union", dans Massimo La Torre (éd.), *European Citizenship: An Institutional Challenge*, la Haye, Kluwer Law International, 1998.
16. Marshall, T.H., *Class, Citizenship, and Social Development*, Garden City, New York, Doubleday, 1964.
17. O'Keeffe, David, "Union Cititzenship", dans David O'Keeffe et Patrick Twomei (éds.), *Legal Issues of the Maastricht Treaty*, Wiley Chancelly Law, 1994.
18. Preuss, Ulrich, " Citizenship and Identity : Aspects of a Political Theory of Citizenship ", dans Richard Bellamy, Vittoria Bufacchi et Dario Castiglione (éds.), *Democracy and Constitutional Culture in the Union of Europe*, Oxford et Londres, Lothian Foundation Press, 1995.

19. Rubio Marin, Rut, "Equal Citizenship and the Difference that Residence Makes", dans Massimo La Torre (éd.), *European Citizenship. An Institutional Challenge*, La Haye, Kluwer Law International, 1998.
20. Schmitt, Carl, *The Concept of the Political*, New Jersey, Rutgers University Press, 1976.
21. Soysal, Yasemin, *The Limits of Citizenship: Migrants and Postnational Membership in Europe*, Chicago et Londres, The University of Chicago Press, 1994 .
22. Weiler, Joseph H., *The Constitution of Europe "Do the new clothes have an emperor" and other essays on European Integration*, Cambridge, Cambridge University Press, 1999.

Articles

1. Bader, Veil M., "Citizenship of the European Union. Human Rights, Rights of Citizens of the Union and of Member States", *Ratio Juris*, No.2, Vol.12, 1999.
2. Cohen, Jean L., "Changing Paradigms of Citizenship and the Exclusiveness of the Demos ", *International Sociology*, No.3, Vol.14, 1999.
3. Day, Stephen et Shaw, Jo, "European Union Electoral Rights and the Political Participation of Migrants in Host Polities", *International Journal of Population Geography*, Vol. 8, 2002.
4. Davis, Roy, "Citizenship of the Union… rights for all?", *European Law Review*, No. 27, 2002.
5. Dobson, Lynn, "Constituting which Good and whose Rights?", *The Federal Trust for Education and Research*, *Online papers*, No. 16, 2003.
6. Faist, Thomas, "Social Citizenship in the European Uniom : Nested Membership ", *Journal of Common Market Studies*, No. 1, Vol. 39, 2001.
7. Ferrajoli, Luigi, "Dai diritti del cittadino ai diritti della persona", dans Danilo Zolo, *La Cittadinanza*, Rome, Laterza, 1994.

8. Garot, Marie-José, "Citizenship and European Integration", *Thinking Outside the Box Editorial Series*, Paper 9, 2003.
9. De Greiff, Pablo, "Habermas on Nationalism and Cosmopolitanism", *Ratio Juris*, No.4, Vol. 15, 2002.
10. Grimm, Dieter, " Does Europe Need a Constitution ?", *Europea Law Journal*, No. 3, Vol.1, 1995.
11. De Groot, Gerard-René, "The European Convention on Nationality: A Step Towards a Ius Commune in the field of nationality law", *Maastricht Journal of European and Comparative Law*, No. 2, Vol. 7, 2000.
12. Lacroix, Justine, "For a European Constitutional Patriotism", *Political Studies*, Vol. 50, 2002.
13. Lardy, Heather, "The Political Rights of Union Citizenship", *European Public Law*, 1996.
14. Maduro, Poiares, "Where to Look for Legitimacy", [www.ieei.pt/images/articles/674/PaperMPM-IEEIucp.pdf], 2003.
15. Nicolaidis, Kallypso, "The New Constitution as European Demoi-cracy?", *The Federal Trust for education and research*, No.38, 2003.
16. Preuss, Ulrich, "Problems of a Concept of European Citizenship", *European Law*, No.3, Vol. 1, 1999.
17. Reich, Norbert et Haebacevica, Solvita," Citizenship and family on trial: A fairly optimistic overview of recent court practice with regard to free movement of persons", *Common Market Law Review*, Vol. 40, 2003.
18. Shaw, Jo, "The Interpretation of European Union Citizenship", *Modern Law Review*, No.3, Vol.61, 1998.
19. Shaw, Jo, "Citizenship of the Union : Towards Post-National Membership ?", dans EUI (éd.), *Collected Courses of the Academy of European Law*, Vol. VI-1, La Haye, 1998.
20. Sierra, Maria et Patel, Jyostna, *Pour une véritable citoyenneté européenne*, Publication du Réseau Européen contre le Racisme, 2001.

21. Smith, Anthony D., "National Identity and the Idea of European Unity", *International Affairs*, No.1, Vol. 68, 1992.
22. Vink, Maarten, "Limits of European Citizenship: European integration and Domestic Immigration Policies", *Constitutionalism Web-Papers*, ConWEB no.4, 2003, http://www.les1.man.ac.uk/conweb/.
23. Weiler, Joseph H., "Europe: The Case against Statehood", *European Law Journal*, No.4, Vol. 1, 1998.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

MIRROR, MIRROR ON THE WALL … PERPETUAL PEACE OR WAR?

Zoltán István Búzás*

Abstract

"One observer has likened the embarrassment that the end of the Cold War caused us as scholars of international relations and national security to the effects the sinking of the Titanic had on the profession of naval engineers."[1] *Indeed, one can hardly find anything written in the post-Cold War period about IR theory that does not mention the discipline's (especially neorealism's) failure to predict this event. After the end of the Cold War rival theories increasingly challenged the neorealist domination of the field. Constitutive of this challenge was the liberal effort to prove that neorealism is degenerating while democratic peace theory is progressive. In this paper I would like to evaluate Francis Fukuyama's "End of History" and John J. Mearsheimer's "Back to the Future" in a naïve and a sophisticated "three-cornered fight"*[2] *based on their predictive power. To do this, first I argue that these different theoretical approaches are commensurable and comparable, I explain which theories I chose and why, and claim that prediction is the appropriate criterion of evaluation. Second, I briefly summarize the theories. Third, I evaluate the theories in what I call "naïve*

---

* Zoltán István Búzás is a Ph.D. student at the University of Delaware, USA.

[1] Peter J. Katzenstein in the Preface of Peter J. Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics*, (New York: Columbia University Press, 1996), p. xi.

[2] The expression refers to testing theories not only against empirical data (two-cornered fight) but against a rival theory and empirical data; see Imre Lakatos, "Falsification and the Methodology of Scientific Research Programmes", in Imre Lakatos and Alan Musgrave, eds, *Criticism and the Growth of Knowledge*, (New York: Cambridge University Press, 1970), p. 115.

three-cornered fight", where I simply focus on the predictions of the theories and I compare them with European empirical evidence. Fourth, I evaluate the theories in "sophisticated three-cornered fight", where I translate the theories into Lakatosian terms, trying to assess them in the context of their theoretical tradition using the "Methodology of Scientific Research Progammes" (hereafter MSRP).[3] *Finally, I conclude that Fukuyama's prediction fares better in the present case than that of Mearsheimer. Due to the limitations of length, some aspects of the paper are severely compressed.*

1. Commensurability, Choice of Theories, and Criterion of Evaluation

While several Kuhnians are still claiming that truth is essentially intra-paradigmatic, the perfect incommensurability thesis cannot be accepted.[4] From an ontological point of view the thesis is a *non sequitur*, and it renders the theory of scientific change inconsistent, because if rival paradigms T and T′ explain totally different phenomena, we cannot compare their explanatory power and judge one of them more appropriate than the other. Kuhn himself was conscious of this, and in subsequent works, after 1962, he rejected the accusation that he subscribed to the perfect incommensurability.[5] From an epistemological point of view, the argument that research programs cannot be compared is not defensible since often they are not embedded in only one completely isolated epistemology, but in several compatible ones. But if we accept that IR theories are characterized by ontological and epistemological overlap, then we have to accept that IR theories are at least partly commensurable.

[3] Imre Lakatos, "Falsification and the Methodology of Scientific Research Programmes", in Imre Lakatos and Alan Musgrave, eds., *Criticism and the Growth of Knowledge*, (New York: Cambridge University Press, 1970), pp. 91-195.

[4] Heikki Patomaki and Colin Wight, "After Postpositivism? The Promises of Critical Realism", *International Studies Quarterly* (2000), Vol. 44, 225-227.

[5] Thomas S. Kuhn, "Reflections on my Critics", in Imre Lakatos and Alan Musgrave, eds., *Criticism and the Growth of Knowledge*, (New York: Cambridge University Press, 1970), pp. 266-270.

I have chosen to assess John J. Mearsheimer's "Back to the Future" and Francis Fukuyama's "The End of the History" for several reasons. They represent both the pessimistic and optimistic wave of post-Cold War theories, they are considered each other's opposites, both were popular and had an important impact within and outside the academic community, they belong to two major IR research programs and are representative modern works for them,[6] and they felicitously encompass the dual nature of the *Geist* of the beginning of the post-Cold War era and that of the literature of "Ends": the hope for heaven mixed with the fright from hell.

If we accept that theories of different SRPs are commensurable, and we have chosen which ones to evaluate, the final task is to choose the adequate criterion. In this particular case prediction[7] seems the most adequate to me. Several authors argue that prediction should not be the ultimate criterion of good theory,[8] and point out the practical and conceptual difficulties of prediction using the "zebra principle,"[9] the "butterfly effect,"[10] or chaos theory.[11] However, at a closer look we can notice that according to these arguments prediction is not incorrect as criterion of evaluation, but too severe. In spite of these objections, I argue that prediction is the

---

[6] See for instance in Stephen M. Walt, "International Relations: One World, Many Theories", *Foreign Policy*, No. 110, Special Edition: Frontiers of Knowledge. (Spring, 1998), p. 38.

[7] Throughout the entire paper I use "prediction" in general sense, without distinguishing between different types of statements referring to the future, such as prediction, forecast, projection and simulation.

[8] Kenneth N. Waltz, "Evaluating Theories", *The American Political Science Review*, Vol. 91, No. 4 (Dec., 1997), p. 916.

[9] See it discussed below. Michael Nicholson, *Causes and Consequences in International Relations*, (New York: Pinter, 1996), pp. 35-37.

[10] "If a butterfly flies from one buttercup to another in June in England instead of staying put, the minute difference in the climate 'causes' a hurricane in the Caribbean the following year"; quoted in Michael Nicholson, *Causes and Consequences in International Relations*, (New York: Pinter, 1996), pp. 43.

[11] Michael Nicholson, *Causes and Consequences in International Relations*, (New York: Pinter, 1996), pp. 42.

most appropriate criterion of theory evaluation in the present case. This is so because using the tolerant SRP and expecting conditional rather than point predictions[12] we make the requirement less severe. Finally, both our selected theories have prediction as their central element.

2. Brief Summary of the Theories

A. "The End of History"

The theory was launched before the fall of the Berlin Wall in the article "The End of History?"[13] We can also find relevant information regarding it in *The End of History and the Last Man*[14] and in the "Second Thoughts: The Last Man in the Bottle,"[15] among others. Fukuyama inverted the direction of the Marxist dialectic, arguing that history ends with the liberal democratic state and not with communism. He proclaims the end of History as a triumph of capitalism and liberal democracy.[16] However, this does not mean that there will not be historical events, but that history understood as mankind's ideological evolution is over. Liberal democracy is perfect as an ideal and it has no serious challenger. Therefore, while it has occurred in the world of ideas, "there are powerful reasons for believing that it is the ideal that will govern the material world *in the long run*".[17]

---

[12] Ibid., p. 37.

[13] Francis Fukuyama, "The End of History?", in *The National Interest*, no. 16 (Summer 1989); See it also in *The National Interest*, Summer 1999, special edition. I use this latter one when citing the article.

[14] Francis Fukuyama, *The End of History and the Last Man,* (The Free Press, 1992-first edition; I use New York: Perennial-Harper Collins, 2002);

[15] Francis Fukuyama, "Second Thoughts: The Last Man in the Bottle", *The National Interest*, Summer 1999, special edition.

[16] Francis Fukuyama, "The End of History?", in *The National Interest*, (Summer 1999-Special Edition), p. 2.

[17] Francis Fukuyama, "The End of History?", in *The National Interest*, (Summer 1999-Special Edition), p. 2.

Fukuyama distinguishes between two subsystems. On the one hand there is a post-historical world characterized by "Common Marketization"[18] and the diminution of the probability of large-scale conflict between states. On the other hand there is the historical world, where ethnic, national or religious conflicts reign. Thus, the end of history is not the end of international conflict as such, because conflict between states still in history or between states in history and those in post-history will be possible. But conflicts between the liberal democratic states of the posthistorical world would be very unlikely.

But why would the peaceful post-historical world be enlarging? Fukuyama answers this question in a detailed manner in *The End of History and the Last Man.*[19] The logic behind it is that the two fundamental desires of the human being (those for economic well-being and recognition) and the two forces of human history (the logic of modern science which makes people satisfy an ever broader gamut of wishes through the economic process;[20] and the fight for recognition which is the engine of history[21]) push for liberal democracy which provides a felicitous framework for economic well-being and recognition.

But even if we accept that liberal democracy is spreading, we still might ask why it would be peaceful. To show why liberal democracies would be peaceful, Fukuyama borrows the Platonian classification of the elements of human soul: a wishing part, a thinking part and *thymos*, a part that asks for recognition.[22] The desire of recognition caused the fight for prestige between the first two individuals, and is the main cause of imperialism, reproducing the slave-master relation at the level of states. But, if war is caused

[18] Ibid., p. 16.
[19] Francis Fukuyama, *The End of History and the Last Man,* (The Free Press, 1992-first edition; I use New York: Perennial-Harper Collins, 2002);
[20] Ibid., pp. 55-138.
[21] Ibid., pp. 143-208.
[22] Ibid., pp. 162-170; see originally in Plato's *Republic*, Book II, 375a-375e and 376c.

primarily by the desire for recognition, the spreading of liberal democracy has a peaceful effect on international level. According to Fukuyama, liberal democracy replaces the irrational desire to be recognized as superior to others with the rational desire to be recognized as equal to others, and thus eliminates important causes of war and imperialism.[23]

B. "Back to the Future"

As a whole, John Mearsheimer's entire theory can be regarded as a critique of "the End of History" and vice versa. The theory was launched in two articles: "Back to the Future: Instability in Europe after the Cold War"[24] and its shorter variant, "Why We Will Miss the Cold War."[25] We can find most of the ideas of the articles in a more detailed form in his book *The Tragedy of Great Power Politics*.[26]

Mearsheimer makes the following prediction: "The next decades in a Europe without the superpowers would probably not be as violent as the first 45 years of this century, but would probably be substantially more prone to violence than the past 45 years."[27] This prediction comes as a logical consequence of the fact that Mearsheimer identifies the following three factors as causes of the Cold War's Long Peace: bipolarity, equality of military force, and nuclear weapons.[28] A secondary factor, hypernationalism,[29] also

---

[23] Ibid., p. 245.

[24] John J. Mearsheimer, "Back to the Future: Instability in Europe After the Cold War", *International Security*, Vol. 15, No. 1 (Summer 1990), pp. 5-56.

[25] John J. Mearsheimer, , "Why We Will Soon Miss the Cold War", *The Atlantic Monthly*, August 1990, Volume 266, No. 2, pages 35-50, see at www.theatlantic.com/politics/foreign/mearsh.htm.

[26] John J. Mearsheimer, *The Tragedy of Great Power Politics*, (New York: W. W. Norton, 2001).

[27] John J. Mearsheimer, Back to the Future: Instability in Europe After the Cold War, Michael E. Brown, Sean M. Lynn-Jones, Steven E. Miller, *The Perils of Anarchy: Contemporary Realism and International Security*, (Cambridge, Massachusetts: The MIT Press, 1995)p. 79.

[28] Ibid., p. 80-81.

helped in maintaining the Cold War peace. As a consequence of the Soviet collapse, bipolarity is defunct. With the end of the Cold War, Mearsheimer takes for granted a multipolar Europe, where Germany, France, Britain, Italy and Russia would probably be the major powers. He also discusses four possible scenarios of nuclear proliferation: a nuclear free Europe, nuclear nonproliferation, mismanaged nuclear proliferation, well-managed proliferation.[30] Mearsheimer considers the last one the least dangerous, and mismanaged proliferation the most likely and also the most dangerous. It is easy then to see why Mearsheimer expects a dangerous world: two of the three primary causes of the Long Peace (bipolarity and equality of military force) were disappearing, the third one (nuclear proliferation) will be probably mismanaged, and the secondary factor (hypernationalism) will be unchecked by structural forces.

Many of the ideas contained by the article are detailed in Mearsheimer's *The Tragedy of Great Power Politics*[31] in which he puts forward his offensive realist theory. Mearsheimer admits that "what has happened so far does appear to contradict the predictions of offensive realism."[32] He explains this with delay of American withdrawal and the fact that too little time has passed since the end of the Cold War or that the Cold War is not over as he defined it. However, he sees "considerable evidence,"[33] especially in Europe, that the gap between the US and its allies is growing. When looking

---

[29] Hypernationalism is defined as "the belief that other nations or nation-states are both inferior and threatening and must therefore be dealt with harshly" in John J. Mearsheimer, "Back to the Future: Instability in Europe After the Cold War", Michael E. Brown, Sean M. Lynn-Jones, Steven E. Miller, *The Perils of Anarchy: Contemporary Realism and International Security,* (Cambridge, Massachusetts: The MIT Press, 1995) p. 94.

[30] Ibid., pp. 80-81.

[31] John J. Mearsheimer, *The Tragedy of Great Power Politics*, (New York: W. W. Norton, 2001).

[32] Ibid., p. 390.

[33] Ibid., p. 391.

in the future, Mearsheimer predicts instability in the next 20 years in Europe if US troops leave the regions and change occurs in the regional power structures.

3. Testing Predictive Power

In this subsection I test the predictive power of the two theories in two ways: first, I deduce one predictive statement from each of them and present them with the empirical evidence. This first test focuses on the theories individually and assumes a certain degree of independence between facts and theory. Therefore I label it "naïve three-cornered fight." Second, I use Imre Lakatos's MSRP to evaluate the theories. This second test focuses on the theories in the context of their SRPs, assessing how they fare compared to theories from their own SRPs and those from competing SRPs in the light of empirical evidence. It is also more conscious of the interdependence between facts and theory, and it is based on a sophisticated metatheory. Therefore I label it "sophisticated three-cornered fight."

A. The Naïve Three-Cornered Fight

We can deduce the following prediction from Fukuyama's theory related to Europe:

G (Generalization): If the post-historical world includes the whole Europe then intra-European peace will be highly likely.

C (Condition): The post-historical world will include the whole Europe with high probability on the long run.

S (Prediction): Intra-European peace in the post-Cold War is highly likely on the long run.

As we can see, the main elements of this prediction are geographical (post-historical world; Europe is added by me), chronological (long run), state of affairs (peace), and probabilistic (highly likely, high probability). In case of anomalies (for instance European war) that run against the prediction Fukuyama could formulate ad hoc explanations (loopholes) regarding each of these elements (the conflict is not in the posthistorical world, it is not yet

"long run" etc.). As a Hegelian idealist he can claim that his prediction has occurred primarily in the realm of ideas and is yet incomplete in the material world; he is also cautious enough not to exclude "the sudden appearance of new ideologies or previously unrecognized contradictions in liberal societies."[34]

Mearsheimer's prediction related to Europe is the following:

G (Generalization): If the Cold War is truly over, then intra-European peace among major powers will be highly unlikely.

C (Condition): The end of the Cold War is highly likely to occur in the future (in the book he adds a time frame, specifying that the end of the Cold War will probably come within the next two decades).

S (Prediction): Intra-European peace in the post-Cold War is highly unlikely in the future.

The main pillars of the prediction are again geographical (Europe), state of affairs (conflict-prone), chronological (post-Cold War period in the article, the next two decades in the book) and the probability of occurrence of peace (highly unlikely). The "emergency exits" built in this theory again can refer to any of these pillars. The one already used by him refers to the chronological one: in his interpretation the Cold War comes to a complete end only when "the Soviet Union withdraws all of its forces from Eastern Europe, U. S. and British forces are withdrawn from the European continent, and NATO and the Warsaw Pact either dissolve or cease to function as alliances."[35] Therefore he can argue that the Cold War did not come to a complete end, thus his prediction was not refuted; however, in his book he added a time frame-next twenty years, and so this loophole cannot be used again credibly.

---

[34] Francis Fukuyama, "The End of History?", in *The National Interest*, no. 16 (Summer 1989), p. 121, in Liviu Tirau, Geopolitical Lectures, (Cluj Napoca: EFES Press, 2002).

[35] John J. Mearsheimer, "Back to the Future, Part II: International Relations Theory and Post-Cold War Europe", *International Security*, Vol. 15, No. 2 (Autumn, 1990), p. 195.

Let us take a brief look at the empirical evidence now. If we think of the latest wave of EU and NATO enlargements from 2004, inevitably Fukuyama's enlarging post-historical zone comes into mind. If we look at the conflicts, the pessimistic prediction still does not seem warranted.[36] The total number of armed conflicts from 1946 to 2003 was 229 involving 148 countries. Of these, 116 conflicts in 78 countries were active in the period after the end of the Cold War (1989–2003). If we look at Europe, we find a low number of conflicts. The only active conflict in 2000 in Europe was in Chechnya, which reached the level of war; in Kosovo there was also war until 1999. But even if Europe was not totally safe from conflicts in the post-Cold War period, the conflicts for regional hegemony, anticipated by Mearsheimer, between the major European powers, did not occur. This is even more significant if we take into consideration that the mathematical probability of an intra-European conflict since 1989, since with the number of dyads between the more than 40 European countries, the chance of conflict over the past 15 years would be high. Moreover, both Kosovo and Chechnya were outside of what we could call posthistorical world, since only with a conceptual stretch could we call the involved regimes liberal democracies.

In conclusion, while both predictions are vague at times and contain several loopholes, based on the above-mentioned empirical data we can say that Fukuyama's conclusion fares better than Mearsheimer's.

B. The Sophisticated Three-Cornered Fight

A series of interrelated theories make up a scientific research program (SRP hereafter), which consists of four components: hard core (fundamental assumptions), negative heuristic (methodological rules that define what paths of research to avoid), positive heuristic

[36] Mikael Eriksson and Peter Wallensteen, "Armed Conflict, 1989-2003", *Journal of Peace Research*, vol. 41, no. 5, 2004, pp. 625-636. They count armed conflict those situations where the number of battle-related casualties reaches 25 per year, and count as war those with minimum 1000 casualties.

(methodological rules that define what paths of research to pursue) and protective belt of auxiliary hypotheses (propositions that bear the tests, get adjusted and readjusted to eliminate anomalies). The research program composed of theories T_1, T_2, T_3 etc. is *theoretically progressive* if each new theory has excess empirical content (predicts novel facts) over the previous one. A theoretically progressive research program is also *empirically progressive* if each of the new theories leads to the discovery of new facts (corroboration)."Finally, let us call a problemshift progressive if it is both theoretically and empirically progressive, and degenerating if it is not."[37] A theory faced with 'falsifying' empirical evidence is reformulated by the theoretician in an ad hoc manner. We can talk about three different types of "ad-hocness"[38]: *ad hoc*$_1$-refers to theoretical reformulations that produces no novel prediction compared to the previous theory; *ad hoc*$_2$-refers to theoretical reformulations that predicted novel facts, but these were not corroborated, that is, verified by empirical evidence; *ad hoc*$_3$-refers to theoretical reformulations that try to predict novel facts with the price of modifying the protective belt of auxiliary hypotheses in a way that violates the positive heuristic of the SRP.

A central problem then is how to define novelty, because this has a decisive role in judging an SRP as progressive or degenerating. Probably the most popular definitions of novel facts are: "temporal" novelty (a new fact must be "improbable or even impossible in the light of previous knowledge."[39]), "new interpretation" novelty (explains old facts in a new way), "heuristic" novelty[40] (whether the

[37] Imre Lakatos, "Falsification and the Methodology of Scientific Research Programmes", in Imre Lakatos and Alan Musgrave, eds., *Criticism and the Growth of Knowledge*, (New York: Cambridge University Press, 1970),p. 118.

[38] Ibid., p. 175, esp. footnotes 2 and 3.

[39] Imre Lakatos, "Falsification and the Methodology of Scientific Research Programmes", in Imre Lakatos and Alan Musgrave, eds., *Criticism and the Growth of Knowledge*, (New York: Cambridge University Press, 1970),p. 118.

[40] Michael R. Gardner argues that "heuristic" novelty conflates two interpretations of novelty: (1) that of "problem-novelty", according to which a fact is novel in

fact being offered to buttress a theory played some role in that theory's construction; if yes, the fact is not novel), "background theory" novelty (new theory compared with old one, new is unanticipated by old theory).[41] It is argued that temporal novelty is too restrictive, new interpretation novelty is too permissive and background theory novelty is incompatible with Lakatos's MSRP and too permissive.[42] Inspired by Colin Elman and Miriam Fendius Elman, I prefer to use heuristic novelty as the main criterion: the same fact cannot be used twice: to construct a theory and then to support it.[43]

Locating the Theories in Their SRPs

"The End of History" as Part of the Liberal SRP

I consider "the End of History" to be part of the democratic peace component of the liberal SRP's republican protective belt. The hard core of this research program is composed of the primacy of societal actors, representation of state preferences, and interdependence and the international system.[44] Out of the three widely accepted

relation to a hypothesis if the hypothesis was not designed to deal with that exact fact; (2) that of "use-novelty", according to which the fact is novel if it was not used to build the theory. See in Michael R. Gardner, "Predicting Novel Facts", *The British Journal for the Philosophy of Science*, Vol. 33, No. 1 (Mar., 1982), esp. pp. 2-3.

[41] Colin Elman and Miriam Fendius Elman, "Lessons from Lakatos", in Colin Elman and Miriam Fendius Elman, eds., *Progress in International Relations Theory,* (Cambridge, Mass.: The MIT Press, 2003), pp. 33-39.

[42] Colin Elman, Miriam Fendius Elman, "How Not to Be Lakatos Intolerant: Appraising Progress in IR Research", *International Studies Quarterly* (2002) 46, pp. 238-241.

[43] John Worrall, "The Ways in Which the Methodology of Scientific Research Programmes Improves on Popper's Methodology", pp. 48-49; Colin Elman and Miriam Fendius Elman, "Lessons from Lakatos", in Colin Elman and Miriam Fendius Elman, eds., *Progress in International Relations Theory,* (Cambridge, Mass.: The MIT Press, 2003), pp. 36-39.

[44] Andrew Moravcsik, "Liberal International Relations Theory: A Scientific Assessment", in Colin Elman and Miriam Fendius Elman, eds., *Progress in*

protective belts of the liberal SRP (ideational liberalism, commercial liberalism and republican liberalism)[45] in my opinion "The End of History" is closest to the republican liberalist protective belt. Within the republican liberalist protective bet it is part of the auxiliary hypotheses related to democratic peace. There are at least four auxiliary hypotheses that we can derive from this democratic peace protective belt:[46] (1) Democratic states are less likely to fight each other than non-democratic states; (2) Democratic states are more likely to ally with each other; (2) Democratic states are more likely to trade with each other; (3) The number of democratic states is likely to grow in the future; (4) Liberal democracy is the final point of mankind's ideological evolution, bringing well-being and recognition, and eliminating imperialism. While the first four auxiliary hypotheses are shared by most of the supporters on democratic peace theory, the last one is an original one brought in by Fukuyama.

Fukuyama clearly builds on the Kantian idea of perpetual peace[47] and the liberal ideas sustained by Wilson. Fukuyama's post-

---

International Relations Theory, (Cambridge, Mass.: The MIT Press, 2003), pp.161-164; Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics", *International Organization,* Vol. 51, No. 4 (Autumn, 1997), pp. 516-520.

[45] Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics", *International Organization,* Vol. 51, No. 4 (Autumn, 1997), pp. 524-533; Andrew Moravcsik, "Liberal International Relations Theory: A Scientific Assessment", in Colin Elman and Miriam Fendius Elman, eds., *Progress in International Relations Theory,* (Cambridge, Mass.: The MIT Press, 2003), p.167-176.

[46] The first three auxiliary hypotheses appear also in James Lee Ray, "A Lakatosian View of the Democratic Peace Research Program", Colin Elman and Miriam Fendius Elman, eds., *Progress in International Relations Theory,* (Cambridge, Mass.: The MIT Press, 2003), p. 221 as auxiliary hypotheses number 1, 2, 4. Ray derives them using a considerable number of representative works on democratic peace theory.

[47] See Kant's Definitive and Permissive Articles for instance in Howard Williams, International Relations in Political Theory (Milton Keynes, PA: Open University Press, 1992), p. 87.

historical world is quite similar to Kant's "*foedus pacificum*". They have the "republican" constitution based on the principles of freedom, equality as citizens and dependence on a common legislation. He was also clearly influenced by Michael W. Doyle, who with his 1983 article[48] drew attention to democratic peace: war within the liberal zone of peace, within the pacific union is not impossible, but highly unlikely, argues Doyle. What is more innovative or new in Fukuyama's theory is the idea expressed in the fourth auxiliary hypothesis. While innovative, its validity (especially referring to imperialism) is partially questionable.

Using temporal, heuristic and background theory novelty as criterion, Moravcsik finds "the End of History" and democratic peace progressive.[49] He argues that in Kant's lifetime Perpetual Peace (or its new version-democratic peace theory) was not very probable, and in the light of previous theories it seemed improbable as well (he does not mention that in Fukuyama's time democratic peace was very probable). Moreover, while Fukuyama's predictions seem to be proved, Mearsheimer's have "yet to find confirmation."[50] Moravcsik signals realist degeneration in the direction of competing research programs, trying to save it from the ocean of anomalies. In a similar manner James Lee Ray tries to prove the progressiveness of democratic peace theory. He defines democratic peace as a SRP in itself, and describes it in terms analogous to Newton's gravitational theory: $P = (1-[d_1*d_2]) / (R^e+1)$, where P is the probability of war between two states, d_1 and d_2 mean the degree of democracy in $state_1$ and $state_2$, R stands for the distance between the two states, and

[48] Michael W. Doyle, "Kant, Liberal Legacies, and Foreign Affairs", in Michael E. Brown, Sean M. Lynn-Jones, and Steven E. Miller, eds., *Debating the Democratic Peace*, (Cambridge, Mass.: The MIT Press, 1996), pp. 3-58.

[49] Andrew Moravcsik, "Liberal International Relations Theory: A Scientific Assessment", in Colin Elman and Miriam Fendius Elman, eds., *Progress in International Relations Theory*, (Cambridge, Mass.: The MIT Press, 2003), pp.178-183.

[50] Ibid., p.187.

finally e is a geographic constant.[51] This formula would stand for the influence of democracy on the probability of war between two countries. After a thorough analysis Ray concludes that democratic peace SRP has excess corroborated empirical content over realism and neorealism, explains their previous success, and so in Lakatosian terms 'falsified' them.[52]

Supporters of the liberal SRP would argue that Fukuyama's theory is part of the progressive intra-program problemshift. It was shown that this problemshift not only has excess empirical content, but that this was also corroborated. The argument in favor of the progressiveness of "The End of History" would focus on the fact that Fukuyama built his theory with pre-1989 facts, before the fall of the Berlin Wall and spread of democracy in Eastern Europe, and can support it with post-Cold War empirical evidence. The counterargument could be that he used the spread of democracy and its peacefulness in 1989 to construct the theory and he uses the *same type* of facts to support it. Also, one can argue that by that time, it was obvious that democracy will spread in Eastern Europe. Finally, it also seems that in some respects the innovative element brought by Fukuyama is questionable, at least referring to imperialism and democracy. Nevertheless, I think that a stronger case can be constructed in favor of the progressiveness of "the End of History." Therefore I would say that Fukuyama's "End of History" is part of a progressive intra-program problemshift. This is neither to say that the entire liberal SRP is progressive and contains only progressive elements, nor that the ulterior development of the democratic peace theory is progressive. But it is to say that "the End of History," according to the heuristic novelty criterion, was part of a progressive intra-program problemshift of the liberal SRP.

---

[51] James Lee Ray, "A Lakatosian View of the Democratic Peace Research Program", Colin Elman and Miriam Fendius Elman, eds., *Progress in International Relations Theory,* (Cambridge, Mass.: The MIT Press, 2003), p. 209.
[52] Ibid., pp. 239-241.

"Back to the Future" as Part of the Neorealist SRP

I see "Back to the Future" as one of the auxiliary hypotheses of the offensive realist component of the neorealist SRP's protective belt. Vasquez sums up the realist SRP's hard core[53] to which I add neorealism's focus on structural constraints: nation states are the primary IR actors, structural constraints influence international outcomes, anarchic international and the hierarchic domestic realms must be distinguished, international conflicts are the most important issues in IR. Out of the One versions of the protective belt of the neorealist SRP (defensive and offensive) "Back to the Future" belongs to the auxiliary hypotheses of the offensive protective belt. Here are some of the auxiliary hypotheses shared by the "Back to the Future": (1) Bipolarity is more stable than multipolarity; (2) The balance of forces reduces the likelihood of conflict; (3) The more power one has, the more secure one is; (4) Actors' behavior (balancing or buck-passing) depends on the type of multipolar system (balanced or unbalanced) and geographical factors. While the first three are shared by most of the theories composing the protective belt, the last one is an innovative element brought in the SRP by Mearsheimer.

While Mearsheimer gets close to Morgenthau with his emphasis on the maximization of relative power, he rejects Morgenthau's source of causation, the *animus dominandi*, the human feature of willing to dominate the others.[54] He combines Morgenthau's appetite for power with Waltz's constraints of the anarchy on the behavior of states. While for defensive realists the

---

[53] John A. Vasquez, The Power of Power Politics: A Critique, (Rutgers University Press, New Brunswick, New Jersey, 1983), p. 18, 32. He deduced these fundamental assumptions using the exemplar of the SRP-Morgenthau's Politics Among Nations.

[54] See John J. Mearsheimer, *The Tragedy of Great Power Politics*, (New York: W. W. Norton, 2001), p. 21; Hans Morgenthau, *Politics among Nations,* (New York: Alfred A. Knopf, 1948), 1st chapter; for comments see also Glenn H. Snyder, "Mearsheimer's World-Offensive Realism and the Struggle for Security", *International Security,* Vol. 27, No. 1 (Summer 2002), pp. 149-173.

main goal is to maintain the existing balance of power, for offensive realists not simply preserving, but increasing the power is the ultimate goal.[55] From this perspective the theory is similar to Gilpin's hegemonic stability theory.[56] According to offensive realists, the more power one has the better, while defensive realists think that less is enough, otherwise the danger of balancing emerges. Mearsheimer seems to overcorrect Waltz's "status quo bias."[57] But to be sure, Mearsheimer's states are not on offense all the time, sometimes they deal with a rival using balancing (preserving the existing power distribution) and buck-passing (avoiding action with the intention of passing the burden of resistance to another state)[58], the choice being influenced by geography and polarity: "In sum, balancing will be most strongly favored in an unbalanced multipolar system when the immediate protagonists are neighbors on land. Buck-passing will be the strategy of choice in a balanced system, especially when the defender is either insular or located at some distance from the challenger."[59]

Is "Back to the Future" part of a progressive balancing problemshift? According to the criterion of heuristic novelty we cannot say that this theory is progressive. At most it can be seen as having excess empirical content that is not (yet) corroborated, and so being only theoretically progressive. Mearsheimer's "Back to the Future" is therefore at most theoretically progressive, while Fukuyama's "End of History" is both theoretically and empirically progressive. But this result does not mean that the entire liberal SRP is progressive while the realist SRP is degenerating. The broadest

---

[55] See John J. Mearsheimer, *The Tragedy of Great Power Politics*, (New York: W. W. Norton, 2001), p. 21.

[56] Robert Gilpin, *War and Change in World Politics*, (Princeton, NJ: Princeton University Press, 1981).

[57] See John J. Mearsheimer, *The Tragedy of Great Power Politics*, (New York: W. W. Norton, 2001), p. 20

[58] Glenn H. Snyder, "Mearsheimer's World-Offensive Realism and the Struggle for Security", *International Security*, Vol. 27, No. 1 (Summer 2002), p. 161.

[59] Ibid., p. 162.

generalization we can make on the basis of our results is that the offensive realist component of the neorealist protective belt is theoretically progressive, but not (yet) empirically progressive. How much do we have to wait for corroboration? The problem is that Lakatos did not and could not give a timeline.

4. Final Considerations and Conclusions

According to the results of our "naïve" and "sophisticated three-cornered" tests, "The End of History" has a higher predictive power and is more progressive than "Back to the Future." What are the implications? We can generalize and say that this means that at present the republican liberal protective belt of the liberal SRP is more progressive than the offensive realist protective belt of the neorealist SRP. Nevertheless, "[a]nomalies, like an odd-shaped tree at the seaside, or a serpent seen in a dream, may provide psychological stimulus for progress."[60] Thus, the offensive realist protective belt can anytime become progressive. But for this to happen, it seems that realism has to borrow innovative elements from rival theories. In fact, one can notice that various strands of realism (for instance classical realism, defensive realism) move closer to other research programs by paying more attention to ideational factors. Opponents of realism tried to prove that this ideational turn proves that realism is degenerating,[61] while champions of realism

---

[60] Imre Lakatos, "Replies to Critics", PSA: Proceedings of the Biennial Meeting of the Philosophy of Science Association, Vol. 1970 (1970), 174.

[61] See John A. Vasquez, *The Power of Power Politics: A Critique*, (Rutgers University Press, New Brunswick, New Jersey, 1983); John A. Vasquez, *The Power of Power Politics: From Classical Realism to Neotraditionalism,* (Cambridge, UK: Cambridge University Press, 1998); John A. Vasquez, "The Realist Paradigm and Degenerative versus Progressive Research Programs: An Appraisal of Neotraditional Research on Waltz's Balancing Proposition", *The American Political Science Review*, Vol. 91, No. 4 (Dec., 1997), pp. 899-912. Other authors: Paul W. Schroeder, "Historical Reality vs. Neo-realist Theory", *International Security*, Vol. 19, No. 1 (Summer 1994), pp. 108-148; Jeffrey W. Legro and Andrew Moravcsik, "Is Anybody Still a Realist?", *International Security*, Vol. 24, No. 2 (Fall 1999), pp. 5-55. These article

reacted promptly.[62] I close this paper with the hope that offensive realism in particular and IR theories in general manage to attain an improved ability of conditional prediction by competition and borrowing, so that we avoid another "Titanic," another unsuccessful prediction of a major change in the international system.

References

1. Brown, Michael E., Lynn-Jones, Sean M., and Steven E. Miller, eds., *Debating the Democratic Peace*, (Cambridge, Mass.: The MIT Press, 1996);
2. Clesse, Armand, Cooper, Richard, and Sakamoto, Yoshikazu, eds., *The International System after the Collapse of the East-West Order,* (Dordrech/Boston/London: Martinus Nijhoff Publishers, incorporated by Kluwer Academic Publishers, 1994);
3. Elman, Colin, and Miriam Fendius Elman, eds., *Progress in International Relations Theory: Appraising the Field* (Cambridge, Mass.: The MIT Press, 2003);
4. Elman, Colin and Miriam Fendius Elman, "Lakatos and Neorealism: A Reply to Vasquez", *The American Political Science Review,* Vol. 91, No. 4 (Dec., 1997);

---

were followed by lively debates: Peter D. Feaver, Gunther Hellmann, Randall L. Schweller, Jeffrey W. Taliaferro, William C. Wohlforth, Jeffrey W. Legro and Andrew Moravcsik, "Correspondence: Brother, Can You Spare a Paradigm? (Or Was Anybody Ever a Realist?)", *International Security*, Vol. 25, No. 1 (Summer 2000), pp. 165-193; see also Colin Elman, Miriam Fendius Elman, Paul W. Schroeder, "History vs. Neo-realism: A Second Look", *International Security*, Vol. 20, No. 1 (Summer, 1995), pp. 182-195.

[62] Kenneth N. Waltz, "Evaluating Theories", *The American Political Science Review,* Vol. 91, No. 4 (Dec., 1997), pp. 913-917; Stephen M. Walt, "The Progressive Power of Realism", *The American Political Science Review,* Vol. 91, No. 4 (Dec., 1997), pp. 931-935; Colin Elman and Miriam Fendius Elman, "Lakatos and Neorealism: A Reply to Vasquez", *The American Political Science Review,* Vol. 91, No. 4 (Dec., 1997), pp. 923-926.

5. Colin Elman, Miriam Fendius Elman, Paul W. Schroeder, "History vs. Neo-realism: A Second Look", *International Security*, Vol. 20, No. 1 (Summer, 1995), pp. 182-195.
6. Fukuyama, Francis**,** *The End of History and the Last Man***,** (The Free Press, 1992, translated in Romanian Mihaela Eftimiu, Paideia Press, 1992?).
7. Mearsheimer, John J., *The Tragedy of Great Power Politics*, 2001(translated in Romanian by Andreea Nastase, Antet XX Press, 2003)
8. Fukuyama, Francis**, "**The End of History?", in *The National Interest*, no. 16 (Summer 1989).
9. Holsti, K. J., "Mirror, Mirror on the Wall, Which Are the Fairest Theories of All?", International Studies Quarterly, Vol. 33, No. 3 (September 1989), pg. 255, 6 pgs.
10. Katzenstein, Peter J. in the Preface of Peter J. Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics*, (New York: Columbia University Press, 1996),
11. Lakatos, Imre, and Alan Musgrave, eds, *Criticism and the Growth of Knowledge*, (New York: Cambridge University Press, 1970)
12. Lakatos, Imre "Replies to Critics", PSA: Proceedings of the Biennial Meeting of the Philosophy of Science Association, Vol. 1970 (1970),
13. Mearsheimer,John J. , "Why We Will Soon Miss the Cold War", *The Atlantic Monthly*, August 1990, Volume 266, No. 2, pages 35-50.
14. Nicholson, Michael, *Causes and Consequences in International Relations*, (New York: Pinter, 1996),
15. Patomaki, Heikki and Colin Wight, "After Postpositivism? The Promises of Critical Realism", *International Studies Quarterly* (2000), Vol. 44, 225-227.
16. Snyder, Glenn H. "Mearsheimer's World-Offensive Realism and the Struggle for Security", *International Security*, Vol. 27, No. 1 (Summer 2002),

17. Walt, Stephen M., "International Relations: One World, Many Theories", *Foreign Policy*, No. 110, Special Edition: Frontiers of Knowledge. (Spring, 1998)
18. John A. Vasquez, editor, Classics of International Relations, Prentice Hall, Upper Saddle
    a. River, New Jersey, 1996-third edition.
19. John A. Vasquez, *The Power of Power Politics: A Critique*, (Rutgers University Press, New Brunswick, New Jersey, 1983);
20. John A. Vasquez, *The Power of Power Politics: From Classical Realism to Neotraditionalism,* (Cambridge, UK: Cambridge University Press, 1998)
21. John A. Vasquez, "The Realist Paradigm and Degenerative versus Progressive Research Programs: An Appraisal of Neotraditional Research on Waltz's Balancing Proposition", *The American Political Science Review,* Vol. 91, No. 4 (Dec., 1997), pp. 899-912.
22. Stephen M. Walt, "International Relations: One World, Many Theories", *Foreign Policy*, No. 110, Special Edition: Frontiers of Knowledge. (Spring, 1998), pp. 29-46.
23. Stephen M. Walt, "The Progressive Power of Realism", *The American Political Science Review,* Vol. 91, No. 4 (Dec., 1997), pp. 931-935.
24. Kenneth N. Waltz, *Theory of International Politics,* (Reading, Mass.: Addison-Wesley, 1979)
25. Kenneth N. Waltz, "Evaluating Theories", *The American Political Science Review,* Vol. 91, No. 4 (Dec., 1997), pp. 913-917.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

L'ANTISEMITISME APPLIQUE. LE CAS A. C. CUZA

Lucian Butaru*

Abstract
According to Octavian Goga, A. C. Cuza (1857-1947) bore only one idea in the Romanian political life. For 40 years, he was only an anti-Semite politician and nothing more. This article analyzes Cuza's "applied writings". His brochures are full of incoherencies. We interpret these incoherencies as localized propaganda. Cuza was not trying to overcome the doubts regarding his ideology ; he was only trying to mobilize as much as possible partisans for his cause. We consider that his strategy relies also on what Eric Wolf describes as the "development of redundancy", a process of repetitiveness through which one frame of understanding the world imposes itself as the only possible and legitimate way of interpreting it.

Nous avons emprunté l'expression „antisémitisme appliqué" à professeur Charles Kecskeméti, d'une référence de celui-ci à l'antisémitisme du XIXe–XXe siècles, antisémitisme qui a été plutôt appliqué qu'innovant.

Situation à comprendre, car, dans cette époque-là, s'accumulait une bibliographie impressionnante, qui ne pouvait pas être ignorée par les nouveaux producteurs de discours antisémite, pour des raisons de légitimation, d'une part (on devait être démontrée la connaissance de la bibliographie) et, d'autre part, la difficulté d'apporter quelque chose de nouveau dépassait, souvent, les enjeux de la démarche.

Nous pourrions dire que, après le XIXe siècle, l'antisémitisme est plutôt une technique qu'une science (nous l'appellerons *technique sociale*) et, pour cette raison, il devient plus transparent

* Lucian Butaru, doctorant en histoire contemporaine, Faculté d'Etudes Européennes, Université de Cluj.

politiquement. Il est un sorte de science qui se trahit facilement ; la relation entre la production de *vérité* et de *pouvoir* étant partiellement dévoilée aussi par le besoin de redéfinir, en hâte, la *position* de juif – ainsi que cette redéfinition ne modifie pas la *structure* des privilèges.

Cette description *structuraliste* doit être nuancée avec une *processuelle*, pour enlever l'impression que le discours antisémite, devenu autonome, cacherait une sorte de volonté, ou n'écouterait aucune loi de l'histoire ou de la nature. L'antisémitisme, comme toute idéologie, comme toute forme culturelle traditionnelle, peut être *instrumentalisé* pour desservir les divers buts et situations. Des individus différents, trouvés, à un moment donné, dans une situation conflictuelle avec autres individus, positionnés comme des *juifs*[1], peuvent utiliser, pour résoudre leurs problèmes, des thèses, des arguments et des *certitudes* offerts par le discours antisémite. Ce sont des problèmes personnels ou des problèmes « généraux », ayant des natures différentes, relatif à la solidarité, à la corruption, à l'aliénation, à l'écologie etc. Qu'est-ce que c'est l'antisémitisme sinon une séduisante solution compliquée pour des problèmes simples ?

En parodiant Jean-Paul Sartre, nous dirions que *les antisémites ne créent pas l'antisémitisme, mais l'antisémitisme crée des antisémites.* Et ceux-ci peuvent contribuer (ou non) au développement du discours, ils peuvent l'appliquer ou ils peuvent seulement le perpétuer passivement, en le transmettant oralement ou en soutenant, parmi des acquisitions, le marché des producteurs de texte antisémite. Donc, nous ne confrontons avec une bibliographie en plein essor et

[1] Il ne doit pas, nécessairement, être des juifs, quelque soit le critère. Ils doivent seulement se situer, avec ou sans leurs accord, dans une position structurellement similaire. Aujourd'hui, par exemple, la nouvelle droite roumaine utilise l'instrumentaire antisémite disponible pour *résoudre le problème de Bohémiens*. Cette affirmation est basée sur les résultat de la recherche effectuée par Ciprian Bogdan, *Noua Dreaptă sau despre „schimbarea la față" a extremismului românesc*, 2003 [mémoire inédit].

activée en permanence – ce qu'on peut appeler *Stand-by anti-Semitism*.

A. C. Cuza fait tout ce qu'on pourrait faire pour la perpétuation du discours antisémite. Pourtant, il ne se remarque pas dans le domaine de la violence physique ; mais, la violence en soi peut manquer, sans affecter la démarche générale.

Cuza était conscient, dès ses études, qu'entre théorie et pratique il n'y a et il ne faut exister aucune césure. Il n'échappait jamais, donc, l'occasion de signaler l'utilité pratique d'une approche théorique. Relatif à ses brochures antisémites, ou ce qu'il appelle « écritures applicatives » [2], celles-ci représentent le point même de rencontre /confusion entre *pouvoir* et *vérité*. Si le publique est religieux, un politicien ne se permet pas se présenter comme athée, mais il faut faire aussi une courte incursion parmi l'imaginaire « théologique ». Une règle du bon sens politique dit qu'on n'est pas permis de négliger les rapports de pouvoir déjà existants dans la société. Seulement un politicien utopique s'aventurerait contre les grandes habitudes, mais ce n'est pas le cas de notre antisémite. Cuza est un conservateur organiciste. Aucun organiciste n'oserait pas considérer la société comme excessivement *modelable*, donc *artificielle*. Même pour les succès d'Hitler, Cuza propose une description sceptique : « une admirable utopie » [3].

La société est modelable, donc, dans la mesure dont elle est modelée dans une direction qui n'atteigne pas les grands préjugés du bon sens. Cuza est un idéaliste, mais il sait que « le sport avec des idées avancées » [4] est moins performant que celui avec des préjugés.

---

[2] Cuza, *Despre poporație. Statistica, teoria şi politica ei. Studiu economic şi politic,* Ediția a II-a Revăzută şi adăogită, Imprimeriile „Independența", Strada R. Poicaré, 17, Bucureşti, 1929, p. V.

[3] A. C. Cuza *apud* Gh. A. Cuza, *Între cifre şi realități. Cuvântare rostită în şedința Camerei din 22 martie 1933 la discuția generală a bugetului,* Monitorul Oficial şi Imprimeriile statului, Imprimeria Centrală, Bucureşti, 1933, p. 15

[4] Cuza, *Generația de la 48 şi Era nouă,* Tipografia Națională, Strada Alexandri, Iaşi, 1889, p. 102.

Mais, avec un peu d'habilité, une certaine description de la réalité peut s'imposer comme « image véritable de la réalité » [5]. Il problématise ce fait très tôt, en l'exprimant en 1914 (18 juillet), dans un exposé fait en qualité de parlementaire.

> « Il n'y a pas fait plus grand que la parole. Parce que, si un fait change une chose, une parole, ou une série des paroles, ou une conception, ou une idée, ou une théorie, changent le monde entier »[6].

Il parlait déjà de ses succès dans la préface de l'édition de 1915 de la *Nationalité dans l'art*, en revenant, plus enthousiaste, en 1927.

> « Pendant le dernier temps, le nationalisme a fait des progrès énormes dans des esprits [...] »[7] « [...] la propagande nationaliste, oralement et écrit – a fait des progrès remarquables, en notre pays, pendant le dernier temps. »[8] « En ce qui me concerne – je suis content, car je peux dire, cette fois aussi, que la *Nationalité dans l'art* a contribué elle aussi avec quelque chose à ce mouvement. »[9]

Donc, nous voyons qu'il ne rêve pas quand il nous dit qu' « une parole [...] change un monde entier », il seulement le constate, avec satisfaction. Aussi, Cuza a bien eu l'intuition de *comment* on peut changer un monde. Même s'il ne l'a pas explicitement dit, il l'a fait : parmi répétition continue. Parce que une certaine description de la réalité s'impose plutôt par ce que Eric Wolf appelle « le développement de la redondance » [10] que par « la victoire d'une

---

[5] Idem, *Obiectul economiei politice şi însemnătatea ei. Lecţiune de deschidere a cursului de economie politică de la Facultatea de Drept din Iaşi, 12 februarie 1901,* Tipografia Naţională, Strada Alexandri No. 11,Iaşi, 1901, p. 43.

[6] Cuza *apud* G. V. Coban, *Fenomenul A. C. Cuza,* Tipografia „Alexandru Ţerek", Mârzescu 9, Colecţia „Cuget moldovenesc" Dir. M. I. Văluţă,, Iaşi, 1939, p. 48.

[7] Cuza, *Naţionalitatea în artă. Expunere a Doctrinei Naţionaliste. Principii, Fapte, Concluzii, Ediţia a II-a, cu anexe, Institutul de Arte Grafice şi Editură „Minerva"*, Bulevardul Academiei 3-Edgar-Quinet 4, Bucureşti, 1915, p. XVI

[8] *Ibidem,* [ed. 1927], p. 341.

[9] *Ibidem,* [ed. 1927], p. XI.

[10] Wolf, Eric, *Europa şi populaţiile fără istorie,* Editura ARC, Chişinău, 2001, p. 382.

logique collective ou d'un impulse esthétique »[11]. Le monde n'est pas changé par le génie, mais par la propagande. Une propagande sur tous les canaux efficients disponibles : « On doit *cultiver* la population par l'intermède des prêtres et des instituteurs [...] » [12] disait Cuza dès le début de sa carrière.

Regardée de ce point de vue, l'activité « cuziste », politique, professorale et littéraire doit être reconsidérée. Les termes « enragé, répétitif, stérile » qu'Eugène Weber[13] lui attribuent, ne décrivent pas la stérilité / fécondité de la démarche cuziste, mais, plutôt, la frustration (que nous avons aussi ressentie) produite par le moment dont le chercheur plonge dans l'intimité du monologue cuziste. Parce que Cuza ne fournit pas des informations, il produit de vérité. Les variations antisémites cuzistes doivent être perçues comme quelque chose située entre rituel et slogan publicitaire. L'activité cuziste, « le cuzisme » – dénomination imposée par « l'usage de la parole » [14] – doit être regardée comme activité de prosélytisme, éminemment politique, qui suit *le modelage de la société après le caractère naturel de celle-ci* [le paradoxe appartient au cuzisme], modelage réalisable seulement après la solution « de la question juive » dans une seule variante « possible [...] [:] l'élimination des juifs »[15]. Les textes, les idées simples et répétitives, les slogans, en spécial ceux de brochures, sont conçus d'une telle manière qu'ils « puissent servir [...] à l'action immédiate » [16]. Même si Cuza a quelques idées en quelque sorte originelles, ou personnelles, le cuzisme est un *antisémitisme appliqué* qui, comme tout l'instrumentaire antisémite est bienvenu, avec toutes ses contradictions inhérentes.

---

[11] *Ibidem*, p. 382.

[12] Cuza, *Despre poporație*, p. 509.

[13] Eugen Weber *apud* Carol Iancu, *Evreii din România. De la emancipare la marginalizare (1919-1938)*, Editura Hasefer, Bucureşti, 2000., p. 156, nota 45.

[14] Cuza, *Doctrina naționalistă creştină. Introducere: Cuzismul. Definiție, Teze, Antiteze, Sinteza,* Tip. Coop. „Trecerea Munților Carpați", Str. Lăpuşneanu No 26, Iaşi, 1928, p. IV.

[15] *Ibidem*, p. 11.

[16] *Ibidem*, p. IV.

La synthèse du cuzisme apparaît dans la brochure *La doctrine nationaliste chrétienne* (1928). Nous voudrions attirer l'attention sur le fait que cette *synthèse* du cuzisme apparaît dans le moment où le mouvement de droite connaissait la plus forte fragmentation, en existant une concurrence acerbe dans ce moment-là pour l'obtention du monopole sur le discours xénophobe, concurrence qui se manifestait surtout par la revendication du « vrai » nationalisme-chrétien-antisémite. Celle-ci est, probablement, une de principales raisons pour laquelle Cuza promut la dénomination de *cuzisme* pour designer *l'antisémitisme véritablement roumain*, qui diffère de « l'antisémitisme paralytique » [17] d'autres partis. « Celle-ci est aussi une garantie pour ne pas déterminer au mouvement de défense nationale-chrétienne, une autre direction. » [18]

La brochure entend, techniquement parlant, 10 thèses. En fait, elles sont soit de moins – parce que les idées essentielles se répètent dans des thèses différentes, soit de plus – parce que la dixième thèse est suivie par « l'affirmation finale, que la nation roumaine, seulement par l'élimination des juifs, peut sauver son existence [...] » [19]. Cette thèse-*bonus* (ou *malus*) a la même consistance que les propositions considérées comme des thèses et numérotés par conséquent.

Le décalogue cuziste, tel comme il est construit, nous permet, donc, l'ignorer ; nous proposons, par conséquence, une structure plus intelligible de son idéologie et nous choisissons par « la totalité de ses éléments, biologiques, théologiques, économiques, sociologiques, historiques » [20] seulement les deux grandes sources : « la loi divine, de l'enseignement du Jésus » et « la loi naturelle de la nationalité » [21]. Que ce sont les sources fondamentales, celles qui devraient avoir de l'importance pour l'électorat virtuel de Cuza, est

---

[17] *Ibidem*, p. 36.
[18] *Ibidem*, p. 9.
[19] *Ibidem*, p. 32.
[20] *Ibidem*, p. 11.
[21] *Ibidem*, p. III.

démontré par l'apparition de celles-ci dans les noms de ses partis : U.N.C., L.A.N.C., P.N.C.

Une formulation plus cohérente de l'antisémitisme apparaît dans son volume de *vers-épigrammes-pensées*, dont Cuza met en évidence quatre grands aspects :

> « La question juive, c'est un quadruple problème : biologique, dans son origine ; théologique, dans son sens, économique et culturel, dans ses conséquences ; politique et sociale, dans son solution » [22]

On peut voir, pourtant, que dans le cas de « pensées », la taxonomie est en quelque sort plus claire ; l'activité professorale a laissé des traces. Nous n'utiliserons pas, pourtant, sa taxonomie ; d'une part, pour éviter les confusions entre le problème biologique-théologique, respectivement le problème culturel-politique ; d'une autre part, pour mettre en évidence surtout l'origine de la problématisation que l'exposé du problème. Au lieu du quadruple problème, donc, nous décrirons une double problématisation.

*

La première d'entre les sources importantes du cuzisme, on peut l'appeler la source originaire ou la matrice de l'antisémitisme, est l'anti-judaïsme de l'Eglise. La différence est que « la secte de monsieur A. C. Cuza »[23] met en évidence *l'esprit* de la lutte contre « l'empire du Satan »[24] et introduit de nombreux éléments « scientifiques » (racistes, en fait) contradictoires, en complétant « la lutte pour croyance » [avec] « la lutte pour science » [qui est] « nécessaire, aussi »[25]. Comme il nous a déjà habitués, A. C. Cuza ne

---

[22] Idem, *Poezii, epigrame şi cugetări în proză,* Ediția a III-a, adăogită, Editura „Bucovina" I. E. Torouțiu, Bucureşti, 1939, p. 300.

[23] Idem, *Eroarea teologiei şi adevărul bisericii. „Secta d-lui A. C. Cuza",* Tipografia Cooperativă „Trecerea Munților Carpați", Str. Lăpuşneanu No 26 Iaşi, 1928.

[24] *Ibidem,* p. 14.

[25] Idem, *Lupta pentru credință şi problema învățământului religios cu ilustrații din „Thora",* Tip. Coop. „Trecerea Munților Carpați", Str. Lăpuşneanu No 26, Iaşi, 1928, p. 4.

se content pas avec un seul type d'arguments (même si plusieurs types d'arguments n'apportent toujours plus de certitude). Cuza améliore dans une telle mesure, par des arguments de la mystique scientifique antisémite occidentale, l'anti-judaïsme classique, qu'on produit des réactions d'opposition de la part de certains membres de l'Eglise. Ce genre d'écritures de Cuza a été considéré, plus ou moins sérieusement, des hérésies. On peut voir, de la polémique entre Cuza et l'archimandrite Iuliu Scriban, polémique décrite dans la brochure *L'erreur de la théologie et la vérité de l'Eglise*, que son pouvoir de synthèse a apporté à Cuza des ennuis aussi. Ennuis qui proviennent même de la sensible zone électorale de l'orthodoxie. La réaction de Cuza à un tel sort d'accusations est ambivalente, car il maintient son point de vue et, en même temps, comme un politicien habile, il se montre assez malléable.

> « Je respecte notre sacrée Eglise, ainsi qu'elle est – même se basant sur l'erreur de la théologie. Car elle est l'église de nos parents et, en réalisant bien, que sa base dogmatique ne peut être changée d'une fois. » [26]

L'erreur en cause est, d'une part, l'utilisation de l'Ancien Testament comme support théologique et, d'autre part, l'interprétation du Nouveau Testament dans l'esprit de la *tolérance* et de la *rémission*. Dans ces conditions, la lutte contre les juifs est rendue, au moins, difficile sinon impossible. Parce que, dans l'Ancien Testament, les juifs apparaissent comme *le peuple élu* et la tolérance et la rémission sont à peine compatibles avec l'instigation à la violence. Cuza découvre, en fait, l'incohérence de l'anti-judaïsme et il tente la résoudre et la dépasser ainsi que les arguments de l'anti-judaïsme puissent être utilisés sans interruption, car le public local est plus réceptif à un tel sort d'arguments.

Cette erreur théologique est attribuée à la tradition qui « est interprétation transmise [...] [donc] œuvre humaine et appartienne à un certain temps »[27]. Cuza donne des suggestions minimales en vue

---

[26] Idem, *Eroarea teologiei ...*, p. 18.
[27] Idem, *Învățătura lui Isus ...*, p. 3.

de corriger l'erreur, en prouvant de l'habileté politique. Ces suggestions se résument à l'élimination de l'Ancien Testament du programme scolaire, son étude restant l'apanage de ceux qui désirent approfondir la théologie. En même temps, il donne des suggestions maximales, en prouvant intransigeance idéologique. Celles-ci feront l'objet de la propagande, qui prêche l'élimination définitive de l'Ancien Testament et la réinterprétation autant que possible abusive de celui Nouveau.

> « Les descendants n'ont pas compris que la parole du Jésus est vraie non seulement dans son esprit, mais aussi dans sa lettre, quand il a dit que les Juifs sont par ses parents le diable : le tueur de gens et le père de la mensonge » [28]. « *Nous ne pourrons pas échapper aux juifs aussi longtemps que le livre juif de l'Ancien Testament* – avec „le peuple élu" autour duquel tourne l'histoire du monde – *continuera être mélangé avec le Nouveau Testament* : en falsifiant l'enseignement du Jésus, qui est, comme je disais autrefois, „antisémitisme supérieur"[...] » [29]

A. C. Cuza parle de cet *antisémitisme supérieur* chaque fois qu'il a l'occasion ; même dans le cadre si impropre du Parlement (la réunion de 12 décembre 1930) : « Si Christ est Dieu, il est antisémite »[30]. Pour sortir sans effort de ce paradoxe, Cuza tranche idéologiquement le problème de l'*antisémitisme supérieur* : ni Moise, « qui nous savons qu'il était égyptien »[31], ni Jésus, qui était « Galiléen après son corps »[32] ne peuvent être revendiquer comme des juifs.

Dans l'interprétation de Cuza, le Nouveau Testament est simple dans la même mesure qu'il est compliqué. *Le vrai enseignement du Jésus*, désintéressé et idéaliste, ne prévoit pas « paix et absolution ;

---

[28] Cuza, „Introducere" în Sava, Ion, *Pericolul satanei (în tablouri),* Cu o prefață de A. C. Cuza, Tipografia „Cartea Medicală" [ediție populară], Bucureşti, 1924, p. 6.

[29] Idem, *Eroarea teologiei ...*, p. 20.

[30] Idem, *Îndrumări de politică externă. Desființarea „Ligei Națiunilor". Revizuirea Tratatelor de Pace. Alianța României cu Germania. Discursuri parlamentare rostite în anii 1920-1936,* Editura „Cugetarea" – Georgescu Delafras, Str. Popa Nan No. 21, Bucureşti IV, 1936 , p. 31.

[31] Idem, *Naționalitatea în artă ...*, [Ed. 1915] p. 322; [Ed. 1927], p. 250.

[32] Idem, *Eroarea teologiei ...*, p. 39.

qu'on sait qu'a été proclamée par Jésus seulement pour des offenses personnelles »[33] :

> « Il n'y a pas : *la miséricorde*, l'absolution, l'indulgence passive. Mais leur contraire même: *la lutte*. La lutte : de la vérité contre le mensonge. La lutte : du bien contre le mal. La lutte : de la lumière contre l'obscurité. »[34]

Les découpages cuzistes nous démontrent que les textes des évangiles (il préfére celle de Mathias) ont ménagé une issue. Cuza n'est pas le premier qui s'en sert. Les offenses personnelles doivent être pardonnées, les petits problèmes contingents doivent être traités avec une indulgence passive ; mais on ne peut jamais négocier avec le saint esprit. Car il y a une seule vérité et la lutte pour celle-ci justifie toute action. Donc, pour les offenses contre l'esprit et pour la défense de la vérité, *la lutte* et *le sacrifice* sont prescrits. On reste au « lutteur » à décider quel de deux termes soit compris comme tel et quel en sens métaphorique. De même, on reste à établir (par l'intermède de la propagande) quelle est *la vérité* et dans quelle mesure on peut associer l'esprit à l'émetteur. Parce que, de l'idéalisme au matérialisme ne reste qu'un pas. On peut en trouver un de grands enjeux de l'essentialisme, de la légitimation politique par des énoncés idéologiques en termes d'une loi divine ou d'une loi naturelle. Ainsi formulée, la lutte se donne à un autre niveau que celui interindividuel. On n'assiste plus à une négociation ou à une lutte vulgaire entre des gens, ni, au moins, entre des groupes, on assiste à une lutte des idées, pour lesquelles les individus sont seulement des porteurs ou, même moins – des hypostases.

Cuza oscille entre idéalisme et matérialisme, en prouvant des qualités de prestidigitateur. Par exemple, à deux pages distance, il est un idéaliste enthousiaste, en blâmant le matérialisme et, puis, il donne une explication matérialiste pour son option.

[33] Idem, *Învățătura lui Isus …*, p. 17.
[34] *Ibidem*, p. 7.

> « Ne pas ramassez des trésors dans ce monde [...] car là où se trouve votre trésor, là sera votre âme. »[35]: « Jésus oppose [...] [à la dogme] matérialiste des juifs, la dogme idéaliste d'une vie supérieure »[36]. [L'explication matérialiste suit :] « Les juifs sont arrivés, parmi l'argent, les maîtres de nos richesses, de nos villes, de nos écoles – de nos âmes »[37].

On peut d'en déduire que l'infrastructure des trésors du ciel est représentée par les trésors du monde. Où est-il l'âme de l'antisémite ? L'âme, le bonheur... – l'amour de l'antisémite passe par Marx, un Marx qui n'est pas trop bien ruminé. Mais, ainsi que nous l'avons dit, pour l'*antisémitisme appliqué* n'a pas d'importance d'où proviennent les arguments ou dans quelle mesure ceux-ci s'intègrent dans l'ensemble – leur efficacité doit être locale, car le public ne lit pas trop attentivement le texte et, en plus, d'un texte à l'autre il oublie. Par conséquence, au moins dans le *Cas Cuza*, le mot *idéologie*, dans le sens attribué par Hannah Arendt (« la logique d'une idée » [38]), est trop poli. Cuza n'a jamais habillé « la camisole de force de la logique » [39] pour embrasser l'antisémitisme. « Les choses se passent différemment en réalité et elles n'ont pas la même précision absolue [que dans la théorie] »[40].

*

La deuxième source importante du cuzisme c'est le nationalisme. Initialement, dans les travaux de Cuza, l'appel au nationalisme semble être le résultat d'une double déception : sociale et nationale.

Nous appellerons cette déception, et l'appel au nationalisme antisémite qui la suit, « la doute de soi du socialiste », en parodiant, ainsi, une expression marxiste utilisée par Cuza pour décrire Sismondi. Même s'il est d'accord avec les principes humanistes-

---

[35] Isus *apud* A. C. Cuza, *op. cit.*, p. 15.
[36] Cuza, *op. cit.*, p. 15.
[37] *Ibidem*, p. 17.
[38] Arendt, Hannah, *op. cit.*, p. 608.
[39] *Ibidem*, p. 609.
[40] Cuza, *Despre poporație*, p. 421.

universalistes du socialisme, Cuza cherche un terrain plus solide pour l'ancrage du présent politique.

> « Combien de temps la fraternisation de tous les peuples et la propriété collective ne sont que des idéals dont nous aspirons, le besoin nous ordonne de rester sur le terrain étroit de l'égoïsme, tant comme peuple envers autres peuples, que comme des individus envers autres individus. » [41] « À la lumière du *principe de la population* la question de la paix universelle devienne pleinement claire, en apparaissant comme un rêve généreux et comme une anticipation des temps dont *on doit croire* et qui sont encore trop éloignés. » [42]

Celle-ci sera une des nombreuses accusations que Cuza apportera à la « Ligue des Nations » : [celle-ci n'est pas une] « une réalité dont on peut s'appuyer » [43]. Le nationalisme apparaît, donc, comme un mal nécessaire pour le présent, mais dont « il faut croire » qu'il peut être dépassé.

> « Le résultat pratique dont il faut arriver est celui que *la politique nationaliste* est la seule naturelle, légitime et raisonnable, étant donné l'état actuel des choses. » [44]

Cette solution raisonnable et provisoire devienne, plus tard, unique, définitive et naturelle. La première Guerre Mondiale et la Révolution d'Octobre feront envoler, pour A. C. Cuza, tant la doute que le socialiste ; la croyance dans la future paix universelle, aussi. On reste seulement les préjugés et le nationalisme. Dans la préface de l'édition de 1927 du travail *La nationalité dans l'art*, Cuza fait plusieurs efforts que jamais pour constituer le nationalisme comme loi naturelle :

> « Le but est de prouver l'existence d'une loi de la nationalité comme loi naturelle. Une loi naturelle, par définition, est la manière constante de manifestation d'un pouvoir de la nature. » [45].

---

[41] Idem, *Generația de la 48 ...*, p. 47.

[42] Idem, *Despre poporație*, p. 521.

[43] Idem, *Îndrumări de politică externă*, p. 21.

[44] Idem, *Despre poporație*, p. 526.

[45] Idem, *Naționalitatea în artă* ..., [Ed. 1927], p. VII.

Il maintienne, pourtant, la définition circulaire présente dans le *motto*: « La nationalité est le pouvoir créateur de la culture humaine – la culture, le pouvoir créateur de la nationalité » [46]. Il est comme s'il justifierait son rôle d'implanter cette loi de la nature. Strict logiquement, la contradiction n'est pas trop grande : celui qui implante les lois de la nature contribue seulement à la réduction de la période de transition. Autrement dit, Cuza essaie soutenir que, « de la culture de la terre [...] à la culture de l'esprit » [47], l'activité du cultivateur dans l'intérêt de la nature ne dépend que des résultats, de la productivité.

Pour tels résultats il est besoin, pourtant, de critères de pureté, pareil à la sélection des grains. Seulement les « roumains de sang » [48] peuvent créer une « vraie » culture roumaine. On ne doit pas être trompé par ce langage métaphorique. En réalité, on peut parler plutôt de la dernière vague de la lutte contre *les formes sans fond* que de la première vague du racisme qui, pourtant, est anticipée dans une certaine mesure.

> « Les peuples *développés* peuvent se permettre le luxe de toute idée et même des expérimentations extravagantes – et sans préjudice. Mais, les peuples *en développement* ont besoin des normes claires de direction, pour *se développer*. » [49]

« Les libres penseurs » [50] sont, ainsi, moins utiles que ceux pareilles au vieillard Cuza, qui se décrit, dans 1929, comme « partisan ferme et sans réserve de l'„idée préconçue" »[51]. L'idée préconçue n'est tant le nationalisme intégrale que la plus importante conséquence de celui-ci : l'antisémitisme. Mais, l'antisémitisme, peut être comme conséquence même du « principe de la nationalité », n'est pas intégrale.

---

[46] *Ibidem*, p. VII.
[47] *Ibidem*, p. 8.
[48] Idem, *Naționalitatea în artă,* [Ed. 1915], p. XIII.
[49] *Ibidem*, pp. X-XI.
[50] *Ibidem*, pp. X-XI.
[51] Idem, *Despre poporație,* [Ed. 1929], p. 608.

Nous donnerons un seul exemple (l'utilisation d'un terme) dans ce sens-là, à l'aide duquel nous croyons pouvoir finir le problème de sources du cuzisme. Le terme que nous avons choisi comme emblématique est « élimination ». Un terme extrêmement violent et extrêmement ambigu.

> « [...] *l'élimination des individus, pour éliminer la collectivité et l'élimination de la collectivité, par des mesures générales, pour éliminer les individus.* » [52] « un corps sain ne souffert pas à la suite de la maladie de ses cellules, car il les élimine » [53].

Au-delà de la violence du langage, on peut trouver le même organicisme animé par un nationalisme qui, nous démontrerons, au niveau déclaratif, au moins, peut être considéré (à la limite) un nationalisme herdérien. De même, il y a encore des réminiscences du discours du jeune Cuza qui déclarait, en 1893 : « Nous ne désirons pas le mal pour personne, nous désirons, pourtant, notre bien. » [54].

> « Le juif, une fois éliminé du commerce, par exemple, ou de l'industrie, il cherchera lui-même, ailleurs, une autre existence [...], ils s'établissant quelque part dans un *territoire libre*. [...] On voit, donc, que l'élimination est *la seule solution possible* pour la question juive, en conformité avec l'intérêt de toutes les nations et même des juifs qui ne seront plus, comment ils sont, partout, un objet de l'haine et du mépris. » [55]

Cuza argumente, idéologiquement, les bienfaits mutuels apportés par l'élimination. Il soutienne, avec la même « rigueur » scientifique que dans le cas de l'arianisme du Nazaréen, que « les juifs sont la seule lignée du mondé manquée du folklore » [56], à la cause du manque d'un foyer national. Pour la même raison, parce qu'ils sont

[52] Idem, *Doctrina naționalistă creştină,* p. 10.
[53] Idem, *Naționalitatea în artă ...*, [Ed. 1908], p. 233; [Ed. 1915], p. 161; [Ed. 1927], p. 127.
[54] Idem, *Discurs asupra proiectului de rĕspuns la mesagiul tronului ...*, p. 30.
[55] *Ibidem*, [Ed. 1915], p. 245; [Ed. 1927], p. 141.
[56] Idem, *Naționalitatea în artă ...*, [ED. 1915], p. 330; [Ed. 1927], p. 256.

obligés se développer dans un cadre culturellement étranger, « les coryphées sémites de l'art [Offenbach, Halevy, Börne, Heine] »[57] sont seulement des talents et non pas des génies :

> « De toute manière, par les œuvres de ces talents, incontestables, les autres peuples n'ont rien gagné. Mais qui pourrait dire que la nation juive n'a pas perdu par leur aliénation ? »[58].

À la fin de ces appréciations, dont quelques-unes peuvent sembler extravagantes, on impose une précision destinée à écarter les éventuelles incompréhensions. En présentant le cuzisme comme idéologie basée sur le nationalisme organiciste et non sur le racisme ou comme une idéologie compatible avec le parlementarisme, nous n'avons pas eu l'intention de minimiser la nocivité de la doctrine. Par contre, nous essayons écarter la distinction (et la confusion qui en découle) faite par la grande majorité des historiens roumains entre le nationalisme (et l'antisémitisme) extrémiste et le nationalisme (et l'antisémitisme) raisonnable. Distinction qui, de point de vue méthodologique, est destinée à séparer leur étude, en occultant les similitudes, la circulation des idées et la structure discursive commune. Aussi, de point de vue politique – car la vérité est politique, même si elle appartienne au passé –, cette distinction confère une image respectable à l'aille tempérée, image qui peut être exploitée dans le cas des « récupérations » post-communistes. Mais, nous avons affaire à *une tradition qui ne mérite pas être réinventée*, au moins non pas dans une manière si peu critique. Car, au moins dans le cas de l'étude de l'antisémitisme, les distinctions, tant celles graduelles / quantitatives que celles contextuelles / qualitatives, alourdissent la compréhension de celui-ci comme phénomène culturel.

Nous essayons, de même, écarter la distinction entre *parole* et *fait*, qui permet aux néo-légionnaires demander de ne pas être jugés pour leurs faits mais pour leurss intentions, pour ce que « les légionnaires

[57] *Ibidem*, [Ed. 1908], p. 75 ; [Ed. 1915], p. 46 ; [Ed. 1927], p. 36.

[58] *Ibidem*, p. 36.

ont eu l'intention d'être » [59]. Parce que, nous voulons exactement pour ça les juger. Le chemin de parole au fait tienne seulement de la cohérence ; et il n'est pas, nécessairement, besoin d'un fou, il suffit un parleur sincère, trouvé dans une position exécutive sûre. La neutralité de l'historien doit s'arrêter – et nous croyons que, *de facto*, elle s'arrête inconsciemment – au moment où il découvre des *modèles de problématisation* qui ont prouvé, au passé, leur nocivité, mais ils survivent en présent sous une forme en quelque sorte atténuée.

Sources primaires

1. Coban, V. Grigore, *Fenomenul A. C. Cuza,* Tipografia „Alexandru Țerek", Mârzescu 9, Colecția „Cuget moldovenesc" Dir. M. I. Văluță, [Extras din revista „Cuget moldovenesc", Nr. 3-4, Aprilie 1939], Iaşi, 1939
2. Cuza, A. C., *Despre poporație. Statistica, teoria şi politica ei. Studiu economic şi politic,* Ediția a II-a Revăzută şi adăogită, Imprimeriile „Independența", Strada R. Poicaré, 17, Bucureşti, 1929
3. Cuza, A. C., *Discurs asupra proiectului de rĕspuns la mesagiul tronului rostit în şedința Camerei de la 10 decembrie 1895,* Imprimeria Statului, Bucureşti, 1895
4. Cuza, A. C., *Doctrina naționalistă creştină. Introducere: Cuzismul. Definiție, Teze, Antiteze, Sinteza,* Tip. Coop. „Trecerea Munților Carpați", Str. Lăpuşneanu No 26, Iaşi, 1928
5. Cuza, A. C., *Eroarea teologiei şi adevărul bisericii. „Secta d-lui A. C. Cuza",* Tipografia Cooperativă „Trecerea Munților Carpați", Str. Lăpuşneanu No 26 Iaşi, 1928
6. Cuza, A. C., *Generația de la 48 şi Era nouă,* Tipografia Națională, Strada Alexandri, Iaşi, 1889
7. Cuza, A. C., *Îndrumări de politică externă. Desființarea „Ligei Națiunilor". Revizuirea Tratatelor de Pace. Alianța României cu*

[59] Paul, Cosmina, „Antisemitismul legionarilor codrenişti – foşti deținuți politici" dans *Anuarul Institutului de Istorie Orală*, nr. V, Presa Universitară Clujeană, Cluj-Napoca, 2004, p. 244, la note 30.

Germania. Discursuri parlamentare rostite în anii 1920-1936, Editura „Cugetarea” – Georgescu Delafras, Str. Popa Nan No. 21, Bucureşti IV, 1936
8. Cuza, A. C., *Învăţătura lui Isus. Judaismul şi teologia creştină,* Editura „Ligii Apărării Naţionale Creştine”, Tipografia Cooperativă „Trecerea Munţilor Carpaţi”, Str. Lăpuşneanu No 26, Iaşi, 1925
9. Cuza, A. C., *Jidanii în război. Documente oficiale. Discurs rostit în şedinţele Adunărei deputaţilor dela 17-18 iulie 1918. Asupra proiectului de lege a împământenirei străinilor născuţi în ţară,* Institutul grafic „Steaua”, Str. Vasile Lascăr, 40 Bis, Bucureşti, 1923
10. Cuza, A. C., *Lupta pentru credinţă şi problema învăţământului religios cu ilustraţii din „Thora”,* Tip. Coop. „Trecerea Munţilor Carpaţi”, Str. Lăpuşneanu No 26, Iaşi, 1928
11. Cuza, A. C., *Obiectul economiei politice şi însemnătatea ei. Lecţiune de deschidere a cursului de economie politică de la Facultatea de Drept din Iaşi,* Tipografia Naţională, Strada Alexandri No. 11, Iaşi, 1901
12. Cuza, A. C., *Naţionalitatea în artă. Expunere a Doctrinei Naţionaliste. Principii, Fapte, Concluzii,* Ediţia a II-a, cu anexe, Institutul de Arte Grafice şi Editură „Minerva”, Bulevardul Academiei 3-Edgar-Quinet 4, Bucureşti, 1915 ; *Naţionalitatea în artă. Principii, fapte, concluzii. Introducere la doctrina naţionalistă-creştină,* Ediţia a III-a, adăogită, Editura „Cartea Românească”, Bucureşti, 1927
13. Cuza, A. C., *Poezii, epigrame şi cugetări în proză,* Ediţia a III-a, adăogită, Editura „Bucovina” I. E. Torouţiu, Bucureşti, 1939
14. Cuza, Gh. A., *Între cifre şi realităţi. Cuvântare rostită în şedinţa Camerei din 22 martie 1933 la discuţia generală a bugetului,* Monitorul Oficial şi Imprimeriile statului, Imprimeria Centrală, Bucureşti, 1933
15. Eminescu, Mihai, *Opere complecte,* Cu o prefaţă şi un studiu introductiv de Cuza, A. C., Institutul de arte grafice V. Ştefăniu & Co., Iaşi, 1914

16. L.A.N.C., *Călăuza bunilor români,* Ediţia a III-a adăogită, Institutul de Arte Grafice şi Editură „Presa Bună", St. Cel Mare, Iaşi, 1927

Sources secondaires

1. Arendt, Hannah, *Originile totalitarismului*, Editura Humanitas, Bucureşti, 1994
2. Bogdan, Ciprian, *Noua dreaptă sau despre „schimbarea la faţă" a extremismului românesc,* [Dizertaţie nepublicată], 2003
3. Iancu, Carol, *Evreii din România. De la emancipare la marginalizare (1919-1938),* Editura Hasefer, Bucureşti, 2000
4. Paul, Cosmina, „Antisemitismul legionarilor codrenişti – foşti deţinuţi politici" în *Anuarul Institutului de Istorie Orală*, V, Presa Universitară Clujeană, Cluj-Napoca, 2004, pp. 231-254
5. Savu, Alexandru Gh., *Sistemul partidelor politice în România, 1919-1940,* Editura Ştiinţifică şi Enciclopedică, Bucureşti, 1976
6. Volovici, Leon, *Ideologia naţionalistă şi "problema evreiască" în România anilor '30,* Editura Humanitas, Bucureşti, 1995
7. Wolf, Eric, *Europa şi populaţiile fără istorie,* Editura ARC, Chişinău, 2001

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

ON THE ORIGINS OF ETRUSCANS

Lucian Popescu*

Abstract

This paper attempts to provide a structural basis of knowledge into one of the most heatedly debated subjects of ancient historiography, Etruscans' origins. It offers an alternative by bringing sources of knowledge (testimonial, material, traditional) in the forefront rather than theories, the latter left to every informed reader's devices.

Foreword

There is growing confidence among modern historians that the subject of Etruscan origins will always remain a matter of conjuncture. The quasi-entirety of classical historians supported the theory that Etruscans descended from seafaring Lydians of Western Asia Minor. A singular figure pointed out the linguistic and historic inconsistencies of Lydian connections. Dionysus' claims for a native origin of Etruscans, despite their otherwise plausible argumentation, failed to be taken into account for either of the following reasons: they had the audacity to cast doubt upon the fathers of history (Herodotus and Thucydides) and they were addressing a subject of no longer much interest. The problem was once again reposed during the Renaissance, using erudite critical analysis of classical testimonies. Yet only by 19th century, with the advent of modern historiography, had the problem been given more stable ground. Instead of being once and for all resolved, the issue only grew in complexity because of the seemingly infinite interpretations of presumably objectifying evidence. Not that the evidence became more conflicting. The evidence today, as it always did, supports the

* Lucian Popescu is an independent researcher, Bucharest, Romania.

thesis of Etruscans' un-nativeness. The other side has so far only given conjectural proofs.

The real problem is the enormous difficulty of every attempt to account for the period *before* their colonization of Italy, which is certain to have taken place in consecutive stages during 8th century BC. Direct evidence is absent, with the notable exception of their name being mentioned as one of the Sea Peoples vanquished by pharaoh Meneptah. Even while acknowledging obvious Aegean Anatolian origins for Etruscans, other problems arise: how close was their relation to Pelasgians, what was the historical context of their migration, from which part of Aegean Anatolia did they originate, when have they departed and how? Linguistic, cultural and racial evidence strongly suggest they were an ill-defined entity out of a myriad of Pelasgian groups shattered by invasions and calamities, ultimately congregating by 1,200BC into a large seafaring nation of marauding pillagers that almost marked the end of civilization throughout Eastern Mediterranean basin. What happened during the four centuries following that event? How and why have Etruscans turned out in Italy and what is the evidence they left on their trail? These are crucial questions which haven't yet been given a proper answer.

Methodology

In order not to flock into the venerable trap of contaminated thinking, I devised my research into logically consecutive segments: (1) philosophy of research, (2) sources and (3) theories. The first will attempt to account the systems of thinking behind theories of Etruscans' origins, the second will describe the testimonial, material and traditional evidence, while the third will discuss possible theories, based on methodologies and evidence already stated.

It is imperative to expose our philosophy in greatest detail, not just the way we integrate attributes into concepts and theories, but always maintain a necessarily *critical* attitude over the entire process of research. Once again, attempting to gain perspective over not only

the object, but the subject itself, furthers the distance from prejudiced thinking and makes one closer possible of reality. Why are we induced in following certain patterns of thought, then superimposed upon every theory we assert? The difficulty of answering this question exposes why *following the customary attention directed towards the object impairs the whole process of knowledge because of subject's inability to project his own views into objects of criticism*. In addition, our sources of information have to be clearly stated, accounted for and critically challenged. Despite the claims for contrary, sources may never be objective. Such claims are issued through endemic lack of discrimination between existence and its formulation. Existence is objective, because it's a facet of reality. Formulation is not. A handful of terracotta will always be what it is, a handful of terracotta. Its qualities as "vessel" and "Etruscan" are superimposed attributes which are no more real than any word and concept we humans have devised.

In the end comes the theory, which is by definition qualitatively inferior to both functions and attributes involved, because of the inescapable errors of attribution, compatibility and operation that come across throughout its becoming. The only way out is to admit the separation of premise from conclusion and thus provide the means for future revisions as our knowledge advances. Precisely this lack of insight into the universe of subject-object, item-name and premise-conclusion sets our understanding at even greater distance of reality.

Sources of knowledge

Contrary to common practice, attributes of reality (sources) must be regarded of considerably greater importance than both functions of interpretation and theories themselves. Practice tells us that *theories, no matter how much they are claimed to be based on fact, are so conditioned by the function that whatever the situation, they all tend to follow a predictable trend towards conforming the premise*.

The present stance over what sources signify is totally unsatisfactory. When mainstream publications speak of "sources", they are in fact claiming other statements on sources, and only those with whom they agree with. No matter how many supporters they find in the past or attempt to create, reality will be brought no closer. When the Lemnian stele was discovered and meaningfully deciphered, it showed Pelasgians of Lemnos Island spoke a language related to Etruscan. That stele alone proves beyond reasonable doubt that Etruscans could not have been indigenous. Supporters of nativity weren't bothered the least. They carried on their claims unhindered, which could never have occurred unless giving truth least precedence. The flaw in most of nativity supporters is that while trying to conform sources to their ideologies, they inadvertently milk them out of their reality. This is one of the reasons, among many others, why *statements over sources should always be regarded as theories rather than neutral expression of reality*.

Is it possible to discriminate true source material from its interpretation? The superficial answer would be positive. In fact, it is impossible. Even an object's naming comes through interpretation. So what can we do to make such intrusion least harmful? We must limit source material to three basic types: testimonial, material and traditional. Testimonial evidence refers to what the ancients said about Etruscans through direct experience. Material evidence refers to the objects left behind by Etruscans as exposed by archaeological findings. These objects may either be physical remains (testifying Etruscan anthropology) or cultural remains (testifying Etruscan language, culture and civilization). Traditional evidence, basically attempting to reconstruct unaccounted elements based on inference to later developments, which had to be linked with those lost parts through laws of causation.

Testimonial Sources

Testimonies are written or unwritten accounts based on someone's direct experience with a subject of inquiry. In order for a statement to

qualify as testimony instead of theory it must solely report rather than discuss. For instance, if A sees B and B has property X, a testimony sounds like "B looks having property X!" while a theory sounds like "For Y cause, B looks having property X!" Any statement containing elements external to direct observation cannot qualify as testimony. Still, in the particular case of Etruscans' origins, we have chains of testimonies later coming into written form with little if any systematic interpretation. Because they lack interpretation and tell of events outside authors' scope of direct inquiry, these stories are neither theories, nor testimonies. For being progressively altered by every teller's memory and imagination, chains of testimonies should only be given consultative value. This whole issue may look inconsequential, but it addresses a key thing: whether or not ancients' writings on Etruscans' origins may be accepted as source material. In present authors' opinion, they might be, but the burden of proof should be searched elsewhere.

On matters of real testimonies over Etruscans' migration in Italy, the problem is deceptively simple. There are none extant and in all likelihood none will ever be found. Etruscans never recorded their history and their ancestors were illiterate. Powers from Asia Minor, Egypt and Levant, which must have had some contact with *Tyrsenians* during the Sea Peoples raids, were in utter ruin and almost have lost writing altogether. Greeks and Etruscans colonized Italy at roughly the same period, so the greatest chance for an account comes from the former. Greeks indeed already perfected Phoenician writing to their own use, but they seldom used it in any circumstance other than administrative and personal. Three centuries were to pass before they wrote anything about themselves, yet quite conspicuously, the issue of Etruscans' nature appeared almost from the moment Greeks accounted their history. Classical Greek historians made no distinction between Etruscans and Pelasgians, interchanging the names as the occasion suited. After Pelasgians became extinct, Hellenistic and Roman historians no longer made the equation and used only the former name as a designation for

Etruscans. Some, such as Dionysus, even came to question that relation altogether.

Traditional Sources

Herodotus

As the evil did not slacken but pressed upon them ever more and more, therefore their king divided the whole Lydian people into two parts, and he appointed by lot one part to remain and the other to go forth from the land; and the king appointed himself to be over that one of the parts which had the lot to stay in the land, and his son to be over that which was departing; and the name of his son was Tyrsenos. So the one party of them, having obtained the lot to go forth from the land, went down to the sea at Smyrna and built ships for themselves, wherein they placed all the movable goods which they had and sailed away to seek for means of living and a land to dwell in; until after passing by many nations they came at last to the land of the Umbrians, and there they founded cities and dwell up to the present time: and changing their name they were called after the king's son who led them out from home, not Lydians but Tyrsenians, taking the name from him.

Histories, Book I.

Thucydides

There are cities in the peninsula, of which one is Sanè, an Andrian colony on the edge of the canal looking towards the sea in the direction of Euboea; the others are Thyssus, Cleonae, Acrothoi, Olophyxus, and Dium; their inhabitants are a mixed multitude of barbarians, speaking Greek as well as their native tongue. A few indeed are Chalcidian; but the greater part are Pelasgians (sprung from the Tyrrhenians who once inhabited Lemnos and Athens), or Bisaltians, Crestonians, Edonians.

History of the Peloponessian War, Book IV.

Hellanicus of Lesbos
Phrastor was the son of Pelasgus, their king, and Menippê, the daughter of Peneus; his son was Amyntor, Amyntor's son was Teutamides, and the latter's son was Nanas. In his reign the Pelasgians were driven out of their country by the Greeks, and after leaving their ships on the river Spines in the Ionian Gulf, they took Croton, an inland city; and proceeding from there, they colonized the country now called Tyrrhenia.

Phoronis, ***Quote by Dionysus of Halicarnassus*****.**

Strabo
The Tyrrheni, then, are called among the Romans "Etrusci" and "Tusci". The Greeks, however, so the story goes, named them thus after Tyrrhenus, the son of Atys, who sent forth colonists hither from Lydia: At a time of famine and dearth of crops, Atys, one of the descendants of Heracles and Omphale, having only two children, by a casting of lots detained one of them, Lydus, and, assembling the greater part of the people with the other, Tyrrhenus, sent them forth. And when Tyrrhenus came, he not only called the country Tyrrhenia after himself, but also put Tarco in charge as "coloniser," and founded twelve cities; Tarco, I say, after whom the city of Tarquinia is named, who, on account of his sagacity from boyhood, is said by the myth-tellers to have been born with grey hair.

Geography, Book V, Chapter 2.

Pliny the Elder
Adnectitur septima, in qua Etruria est ab amne Macra, ipsa mutatis saepe nominibus. Umbros inde exegere antiquitus Pelasgi, hos Lydi, a quorum rege Tyrrheni, mox a sacrifico ritu lingua Graecorum Tusci sunt cognominati.

The Natural History, Book III

Justinus
The causes of the Gauls' coming into Italy, in quest of new settlements, were civil discords and perpetual contentions at home; and when, from impatience of those feuds, they had sought refuge in Italy, they expelled the Tuscans from their country, and founded Milan, Como, Brescia, Verona, Bergamo, Trent, and Vicenza. The Tuscans, too, when they were driven from their old settlements, betook themselves, under a captain named Rhaetus, towards the Alps, where they founded the nation of Rhaetia, so named from their leader. **Epitome of the *Phillipic History* of Pompeius Trogus, Book XX.**

Dionysus of Halicarnassus
[*Due to very limited space, although chapters #23 - #29 are all relevant to our subject, only #30 will be quoted, the rest being strongly recommended to the reader as an intelligent inquiry over the classical consensus of Pelasgian – Tyrrhenian ethnic identity, rejected by Dionysus, who claimed only Pelasgians colonized Tuscany while ancestors of Etruscans have always been where they were.*]
For this reason, therefore, I am persuaded that the Pelasgians are a different people from the Tyrrhenians. And I do not believe, either, that the Tyrrhenians were a colony of the Lydians; for they do not use the same language as the latter, nor can it be alleged that, though they no longer speak a similar tongue, they still retain some other indications of their mother country. For they neither worship the same gods as the Lydians nor make use of similar laws or institutions, but in these very respects they differ more from the Lydians than from the Pelasgians. Indeed, those probably come nearest to the truth who declare that the nation migrated from nowhere signal, but was native to the country, since it is found to be a very ancient nation and to agree with no other either in its language or in its manner of living. And there is no reason why the Greeks should not have called them by this name, both from their

living in towers and from the name of one of their rulers. **Roman Antiquities, Book I, Chapter 30.**

Material Sources

Material sources are the single most important basis upon which one might reconstruct poorly accounted periods in human history. Approach towards unearthed remains must be two-folded: intrinsic and comparative. Intrinsic approach identifies objects according to basic class: “vessel”, “temple”, “statue”, and so on. Intrinsic interpretation also follows two directions: one towards identifying object by form, the other by function. For instance, an inscription is both decorated stone (by form) and linguistic testimony (by function). Comparative approach relates basic classes into consistent groupings, based upon formal or functional similarities. For instance, Villanovan remains belong to Urnfield Culture (shared by early Celts, Italics, Venetians and Illyrians alike), which in turn belongs to Aryan Culture. Once someone respects the stages of approach, accumulates enough expertise to be able to make judgments and builds those judgments on strictly logical basis, the output of these functions should not be held into question. In order to retain a common basis for discussion, I will further use the established terminology rather than trying to create a better one.

Based on its nature, material evidence is classified as either biological or cultural. Biological evidence, as the name suggests, refers in our case to remains of Etruscans themselves. Of greatest importance for racial analysis are skulls, of course. The problem of skulls is that they are hardest to preserve throughout time, being smashed into pieces by the pressure of land above. Very few integral skulls survive three millenniums and only under special conditions. Further complicating the issue, some Etruscans incinerated their dead and buried the ashes into sealed urns. Most, however, used inhumation, thus making further racial analysis attainable. Cultural evidence is extremely abundant in our case. It has provided all types of data needed to reconstruct Etruscan civilization under acceptable

detail. Objects range from personal belongings to monuments, although few of the latter have survived present times, because of the materials used (terracotta and wood). Objects might also be classified into those destined towards utility and the other towards artistic and religious usage. This distinction, however, is less than obvious once we analyze more closely ancient societies.

As biological and cultural evidence usually run in accordance with each other, it would be pointless to describe them separately. In author's view they form the sides of the same coin, thus will be given equal treatment.

The Apennine People

By early Bronze Age the ethnically composite population of peninsular Italy gradually merged into a single ethnic group, called *Apennine*. The catalyst appears to be a third wave of Near-Eastern migration which by the eve of 2nd millennium BC brought Bronze technology and superior knowledge in agriculture. Of course, this may not have been the only cause but, whatever the case, Tuscany between 1,800BC and 1,200BC was obviously peopled by one and the same people. Although we have no direct proof, this people used the vehicle of a single language, otherwise such cultural homogeneity would have been impossible. Northern Picenians spoke their language, which has no relatives and cannot be understood in any fashion, up until the latter have been romanized. Apennine people, with whom Italian and Marxist scholars relate Etruscans, had a mixed economy of farming and herding and lived in scattered clan-based units. Culturally, they have been static and unimpressive. By inference from un-Aryan features of later Italics applied upon archaeological remains of religious usage it is safe to assume the form of religion they practiced was centered upon rituals of fertility, a common feature to all Old European cultures. They buried their kin collectively in pit graves, practice surviving in Southern Italy until Sabines and Greeks conquered the region. Certain elements indeed witness a level of interaction with the Aryan pile-dwelling Terramare

people from North, but the body of this people remains thoroughly un-Aryan. Racially, owing to their composite origin, Apennine people belonged to multiple physical types: an Upper-Paleolithic element characterized by medium stature, wide faces, dark-mixed complexion, bulky built and abundant coarse hair; a Near-Eastern Neolithic element characterized by small stature, short faces, dark complexion, slender built and a generally childish constitution; a Near-Eastern Copper-Age Megalithic element characterized by tall stature, long faces, dark complexion, slender built and rather virile features; a Near-Eastern Bronze-Age element similar to the above, only even taller, its nose characteristically beaked and head larger than longer if looked from above.

The Villanovan People

Although Aryans have lived in Continental Italy from Early Bronze-Age, their first settlement in Tuscany occurred following a second wave of invasion. By the latter part of 2nd millennium AD, Central European groups became restless and started to invade in large numbers their neighbors' territories. By 1200BC ancestors of Western Italics crossed the Julian Alps and for some reason evaded settling the fertile Po Valley. Everything in their path was destroyed. Terramare settlements are deserted and marshes reclaimed the land. One group crossed the Apennines and conquered Tuscany and Lazio. Its culture, while originally the same as Celts' and Illyrians', gradually regionalizes into what is called proto-Villanovan culture, encompassing the historical provinces of Etruria, Latium and Emilia. Apennine culture, after summoning feeble disorganized resistance, is drawn increasingly to the south. Its influence upon emerging proto-Villanovan culture has been minimal, which is perplexingly acknowledged by the supporters of nativity, even though it invalidates any continuity thesis. Urnfield culture, of which Villanovan was part of, came into being in Central Europe. Its chief characteristic is the placement of dead people's ashes into funerary urns, latter interred. Cremation was an old Aryan habit, connected to

their beliefs in the expiatory quality of fire, yet only here had the remains been gathered into funerary urns. What differentiates Villanovan from other Urnfield cultures is the shape of the urn and the amount of decoration. If older inhabitants were to prevail, we would expect major modifications following and large accretions from previous cultures, as in Greece. None of this can be inferred. The very motifs with which urns were decorated were of Aryan nature (corded and meander motifs, sun wheels and other charms of good luck). Stelas, fibulas, swastikas, pottery styles, weaponry (battle axes, double-edged swords) further shatter any doubt regarding this culture's origins. These early Italics crafted fine iron weapons, used horses and chariots and had a very warlike nature. When they weren't at war, they raised cattle and horses, their most valued possessions. There were no horses and chariots in Italy before Aryans. Their organization was tribal, unlike earlier inhabitants. Initially, like among Celts who retained the habit, society must have been stratified in three classes: priests, warriors and peasants. Among Italics, warrior and peasant classes merged, while the priestly class remained extant in the particular case of Latins, where, unlike Celts, the old common-Aryan name has been preserved (Flamen, from a same stem of which Brahmin originated). Even though Villanovan culture can only be accounted archaeologically, the meaning of certain rituals and beliefs can be inferred based on those of Latins, its only direct descendants. While admittedly appropriating elements from it, Etruscans' culture is no more fruitful in reconstructing Villanovan society than Vedic hymns for Indus Valley civilization. There is no proof of even the crudest ship able to carry more than a couple of fishermen. The commerce they were involved into was made on land, with neighboring peoples. Villanovans were skilled metallurgists and became also skilled farmers. Because Tuscany was richest in mineral deposits, it occupied a strategic position which made neighbors envious and always ready for good loot. Three hundred years later, Iron-Age ancestors of Eastern Italics migrated in the peninsula and chased

away Latins of almost all of their lands. Unlike earlier Urnfield People, Eastern Italics were faithful to the old tradition which used both burial in tumuli and cremation. This ethnic shift is seen in the gradual transition between proto-Villanovan and Villanovan culture. Tuscany is occupied by Umbrians, but pockets of Latin speakers, as witnessed by Western Italic placenames, must have remained up until Etruscans subjected them all.

The racial type of Villanovans is difficult to be determined, because of the widespread use of cremation. Those few bodies that escaped cremation and natural degradation tell us the story of a composite people. The root Urnfield population from which Italics arose was for the most part member of an already composite typology, who departed from the Aryan norm by having shorter faces, smaller height, stockier built and characteristic globular head form. Pigmentation was very likely not entirely fair, but more into the light-mixed category. By mixture with indigenes, Italics become even shorter and less fair. Still, the anthropological difference between Iron-Age peoples of Urnfield stock, complexion notwithstanding, is negligible. In minority position there was a relatively unmixed Aryan type, characterized by great height, long narrow angular faces, fair complexion and slender muscular built. The latter is present only among earliest elements and will be lost through mixture. As shown in numerous paintings, a large part of Etruscans belonged to his type and were pictured as blond, although they more likely were light-mixed in hair and eyes pigmentation.

The Etruscan People

The Bronze Age peoples of Aegean Anatolia, despite the proximity to Hittite Empire, were politically independent and subsidiary to Aegean cultural complex. The rugged coasts, the poor terrain, the unpredictable climate were powerful arguments for these people to supplement their means with piracy. It is commonly accepted that Pelasgians were the results of large migrations from Western Anatolia who occurred in two steps and brought the use of metals

and seeds of civilization within a desolate and almost uninhabited land. Cultural, anthropological, linguistic and ultimately historical evidence indicates these were the ancestors of Etruscan people, called Tyrsenian by the ancients. This name was alternatively used in classical sources for pockets of Pelasgians living in North-Eastern Aegean basin (NW Asia Minor, S Thrace), which is very likely the ancestral homeland of Etruscans. It is also likely that, as some argue, Tyrsenians shared parts of their country with Aryo-Anatolians without ever becoming part of them.

Cultural clues, such as objects and practices of obvious Near-Eastern origins, make us comfortably certain of Tyrsenians' contribution to Sea Peoples raids. In fact, their name (*Teresh*) was listed in Egyptian documents along with other pirates who attacked the kingdom in the second half of 12th century BC. Animated by a common wish for better life these partially civilized peoples of Aegean Basin evicted from their land by other invaders caused havoc within the Eastern Mediterranean world, raiding and setting on fire every wealthy port in their path. They were superb salesmen and had the technical means to make very long trips. Their ships could accustom along with trade goods large numbers of people for the period's standards. In the end Sea Peoples became part of the world they once shattered to the ground.

The most difficult problem is to try to account the four hundred years between the Sea Peoples and the settlement of Tuscany. There is no previous trace of Etruscan-like cultures on Italian soil, so the place of departure should be searched elsewhere. The only plausible location, on cultural, racial and linguistic grounds, is Aegean Asia Minor. Still, it is unlikely that Etruscans have returned into their native regions. After all, other peoples had long before overrun their native regions. It is more likely they moved in scattered groups from one land to another until finding a suitable place to live. In addition, one must remember that not all Tyrsenians migrated. Those who remained behind have gradually been Hellenized. Recent evidence, the so-called Kumdanli Inscription, has

pointed out pockets of Eastern Tyrsenians survived in Aegean Anatolia to as late as 2nd century AD.

The context in which Etruscans colonized Tuscany remains unclear, but it must be linked with region's great natural and human wealth. By 8th century BC, Tuscany enters the so-called "*Orientalizing Period*", which marks the beginnings of civilization in Italy. Suddenly a culture which bares striking similarity to Archaic Ionian Greek appears on the coastline along with the first cities and rapidly irradiates to the mainland. In just a few decades, Villanovan territory west of Tiber becomes recognizably Etruscan. Nativity supporters have argued this "orientalizing trend" is to be accounted on Greek colonists. This is wrong for two reasons: first, there is no proof for any Greek settlement in Tuscany, secondly much of those "oriental" elements have no Greek counterpart. Etruscan sacred culture, lifestyle, language bare no substantial similarity to either Greek or Villanovan models. As about their art and material culture, while indeed similar to Greek and Villanovan, the latter can entirely be accounted on expected indigenous accretions while the former remains speculative. Substantial similarity, including racial, is only shared with Pelasgians. Classical Greek sources made no distinction between the two peoples. Only after Pelasgians have gone extinct have Greeks called Etruscans using a specific name. Dionysus, often quoted by nativity supporters, also believed civilization in Tuscany was brought by Pelasgians, only that, in his opinion, the latter did not prevail over indigenous peoples.

A crucial issue, which cannot be coincidental, is that Greek and Etruscan colonization of Italy occurred roughly about the same time (8th and 7th century BC), the former originating from the same putative region claimed by Greeks to have been the homeland of Etruscans, Lydia. Another suggestive issue is that neither one attempted to colonize the other's chosen territory, which is unexpected had the two migrations been unlinked. Campania was the only land where the spheres of influence met. Here, for a considerable time, the colonies lived side by side in relative peace.

These facts further enhance the credibility of Greek sources in accounting events related to Pelasgian settlement of Tuscany. If they weren't well acquainted with the issue, how on earth would have Herodotus known that Etruscans met Umbrians in Tuscany.

Nativity supporters tell us there is no archaeological proof for colonization. Quite the contrary! Proof is only absent for an *invasion*, which nobody expects to have been. Seaborne colonization usually involves a pioneering group, who testes the feasibility of settlement. If conditions are proven right, they summon their kinsmen to the new territory. Ships being at that time able to carry only a couple dozens of people and their goods, such movements required decades to complete and very skilled seafarers for perilous long-distance travels. Etruscan settlement mirrored the Greek. Civilization followed the founding of the first city. More and more cities were founded and for a time, common goals prevented competition against each other in favor of expanding their spheres of control deep into natives' land. Just like Greek colonization, Etruscans' was obviously not triggered by wishes for expansion, but by economic and demographic pressure. Quickly after the colonization, Etruscan cities gathered into a league of twelve whose purpose was to appease frictions and decide actions for the common interest. Greeks, for a good reason, believed Etruscans were their half-kinsmen. This whole action is a carbon copy of Greeks' own careful strategies of settlement and explains the unusual efficiency with which Etruscans have pacified the warlike peoples they encountered. Both are based themselves on highly effective Mycenaean and Minoan methods of settlement.

After invasion came a long process of ethnic fusion between immigrants and "natives". As immigrants could at best form an upper layer over natives much more numerous than themselves, lots of Italic (Villanovan) elements penetrated into what will be known as Classical Etruscan Civilization. In addition, the tremendous advancement of Greek civilization only furthered the latter's influence upon Etruscan civilization. Still, the core of Etruscan

civilization remained faithful to its Aegean model until its demise on behalf of the very city they once founded, Rome.

Etruscans physically resembled Pelasgians to the point of identity. By analyzing the racial type of earliest people buried in the lavish sepulchers, we easily obtain a picture of the features introduced by these incomers. They were taller than locals, universally brunet, with fine almond-shaped eyes, aquiline noses, long narrow heads and gracile built.

Whether or not they knew writing in the moment of settlement will never be established. They later used the Ionian Greek alphabet and employed writing only for administrative, religious and personal inscriptions. The language, because it relates to none other except Pelasgian and Rhaetian, one of its late offspring, defies meaningful translation. Long before suggested by Classical Greek sources, the alliance of Etruscan to Pre-Greek Aegean dialectal complex has now been proven certain by the similarity to Lemnian language. Greek sources place post-migration remnants of Tyrsenians in North-Western Asia Minor, in the region where now Phrygians, Greeks and Thracians lived. It is indeed one and the same with the former kingdom of Troy (Taruisas), to which the very name Tyrsenians (including its derivative form *Rasenna*) is very likely linked. As it has been suggested, legends of Aeneid are certainly influenced by Etruscans' own stories (now lost) of origins. Otherwise, how could Aryo-Anatolian character names occur? Although not being itself Aryo-Anatolian, as some argue, Etruscan shows conclusive lexical proof of contact with those languages, like the word for priest: "damara" in Hittite, "tamara" in Etruscan or the storm god, the most important deity of both peoples' pantheon: "*Tarhun*" in Hittite, "*Tarchon*" in Etruscan, the eponymical founder of Tarquinia.

All substantial aspects of Etruscan culture (artistic, material and religious), society (occupations, lifestyle) and civilization (organization, infrastructure, architecture) point strongly towards the relation with Pelasgians and, to a lesser extent, other peoples of Asia

Minor, something already established on linguistic and racial grounds. Further proof, placenames in ancient Tuscany were almost entirely Italic, with the notable exception of a few cities (Cortona, Tarquinia), which appear to have been built on no previous site. It becomes certain that **Etruscans were the sole legitimate heirs of Aegean civilization in classical world and furthest apart of older developments in prehistoric Italy.**

Final Assessment

How can we archaeologically substantiate Phoenician epic travels around African continent? And yet we know they actually went there, based on historical accounts and on imported objects which could not be there unless they somewhat contacted those faraway peoples. A similar standard must be applied for the unaccounted centuries in Etruscan history, between 1,200BC and 800BC. The very existence of eastern objects in their tombs, of rituals typical of Western Anatolia, of racial types unknown in Italy, of language akin Pelasgian, constitute more than sufficient evidence against every criticism who twists the unaccounted period into "evidence" for Etruscans' nativity. The latter is, once again, an attitude rooted in logical impotence: if A is proved as not-A, that neither means it's non-A, nor automatically B. If I claim my hand being black while my hand is in fact white, that doesn't make the other claims of my hand being blue any closer of reality. Negative arguments are no arguments at all. Once someone makes a statement, he must prove it being rooted in reality, not indulge into a demonstration against fictive negations of the thesis. Supporters of Etruscans' nativity have had a very basic thing to demonstrate: one, an unbroken continuity between Villanovan and Etruscan periods, the other, a documented relegation of all non-Villanovan elements to foreign influences. So far, despite the support they receive within academic world, their arguments are so shallow and tendentious that man is forced to question the moral integrity of the proponents. As the Indian philosopher Shankara most memorably said: "From whatever points

of view their systems are tested with regard to their plausibility, they cave in on all sides, like the walls of a well dug in sandy soil." The theory of Etruscan autochthony is ridiculous and untenable, which doesn't make the other automatically correct. Incidentally, sources support the ancient counts on Anatolian origins and the minuses of unaccounted periods are inherent for prehistoric peoples, who were object rather than subject of history. Their history existed only insofar other peoples had the need of mentioning them. A people of seamen, pirates and traders sentenced to oblivion managed to piece together a vast array of influences of peoples they contacted with (including Aryans of Italy) upon a firmly Aegean (Pelasgian) basis and give rise to one of the greatest civilization in the classical world, to whom Roman and ultimately modern European civilization will always be in heavy debt.

Sources

1. Beekes, R.S.P., *The position of Etruscan. Indogermanica et Italica*, FS H. Rix, ed. G. Meiser. Innsbruck, 1993
2. Beekes, R.S.P., *The Origin of the Etruscans*, Koninklijke Nederlandse Akademie van Wetenschappen, Amsterdam, 2003
3. Brandenstein, W. "Tyrrhener" in *RE* ii 7, 1943
4. Briquel, D. *Les Pelasges en Italie,* Rome, 1984
5. Briquel, D. *Les Tyrrhenes, peuple des tours. Denys d'Halicarnasse et l'autochtonie des Etrusques*, Rome, 1993
6. Briquel, D., *La civilisation étrusque,* Rome, 1999
7. Bryce, T.R., *The Kingdom of the Hittites*. Oxford, 1998
8. Coon, C., *The Races of Europe,* 1939
9. De Simone, C. *I tirreni a Lemnos*, Firenze, 1996
10. Dussaud, R. *Prélydiens, Hittites et Achéens*. Paul Geuthner, Paris, 1958
11. Haas, V., *Geschichte der hethitischen Religion,* Leiden, 1991
12. Hencken, H. *Tarquinia, Villanovans and Early Etruscans,* Cambridge Mass., 1968
13. Lochner-Hüttenbach, F. *Die Pelasger*,Wien. 1960

14. Melchert, H. C., *Anatolian Historical Morphology*. Amsterdam/Atlanta. 1994
15. Mountjoy, P.A., "The East Aegean-West Anatolian interface in the late Bronze Age: Mycenaeans and the Kingdom of Ahhiyawa" in *Anatolian Studies*, 1998, no. 40, pp. 33 - 67
16. Neumann, G., "Wie haben die Troer im 13. Jahrhundert gesprochen?" in *Wurzburger Jahrbucher fur die Altertumsgeschichte* nf 23, 1999,pp. 15 - 23.
17. Oettinger, N., "Die Gliederung des anatolischen Sprachgebiets" *Zeitschr. f. vergl. Sprachwiss,* no. 92, 1978,pp. 74 - 92.
18. Pallottino, M., *L'origine degli Etruschi*, Rome. 1947
19. Pfiffig, A.J., *Religio etrusca*, Graz, 1975
20. Rhys Carpenter, *Folk Tale, Fiction and Saga in the Homeric Epics*, Berkeley - Los Angeles, 1946
21. Rix, H. *Das etruskische Cognomen*,Wiesbaden, 1963
22. Sakellariou, M.B. *La migration grecque en Ionie*, Athens, 1958
23. Steinbauer, D. *Neues Handbuch des Etruskischen*, St. Katharinen. 1999
24. Wainwright, G.A., "The Teresh, the Etruscans and Asia Minor", *Anatolian Studies* IX, 1959, 197 - 213.
25. Watkins, C. "The language of the Trojans" in M.J. Mellink (ed.). *Troy and the Trojan War*, Bryn Mawr, pp. 45-62, 1986

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

TURKEY: EN ROUTE TO MEET THE CHALLENGING MAASTRICHT CRITERIA?

Caner Bakir*

Abstract

Remarkable progress over the course of the past four years has been made in Turkey with regards to economic reforms towards the EU accession. This paper briefly analyses Turkey's current shape in terms of Maastricht criteria with a special reference to EU Accession Partners – Bulgaria, Croatia and Romania. It also underlines some of the major macroeconomic challenges ahead.

17 December 2004 was a turning point in both Turkish and European history: The European Council followed the European Commission's recommendation and approved the opening of accession negotiations with Turkey, which will commence on 3 October 2005. The goal of accession to the European Union (EU) has become one of the main driving forces for broadly defined legal, political, economic and financial reforms in Turkey. An analysis of Turkey's current shape in terms of Maastricht criteria provides us with a brief assessment of major macroeconomic challenges ahead. In order to provide a brief comparison, this piece will also have references to EU Accession Partners – Bulgaria, Croatia and Romania.

---

* Caner Bakir is an Assistant Professor in the Department of International Relations at Koc University, Istanbul.

Table 1. Bulgaria, Croatia, Romania and Turkey: Economic Convergence

Bulgaria	**2004F**	**2005F**	**2006F**	**2007F**
GDP %	5.1	4.6	5	5
Inflation (%pavg)	6.1	4.8	3.5	3
Budget balance (%GDP)	0	-0.7	0	-0.8
Public Debt (%GDP)	42.5	43	38.5	35.5
Current A/C (%GDP)	-8.7	-7.6	-7.3	-6.9
Croatia				
GDP %	4.2	3.9	4	4
Inflation (%pavg)	2.4	2.3	2	2
Budget balance (%GDP)	-5	-4.4	-3.5	-3
Public Debt (%GDP)	51.5	50.3	49.1	47.4
Current A/C (%GDP)	-6.5	-5.6	-4.1	-3.8
Romania				
GDP %	5	4.9	4.8	4.8
Inflation (%pavg)	12	8.6	5.5	4
Budget balance (%GDP)	-1.6	-1.5	-1.4	-1.4
Public Debt (%GDP)	25.3	24.6	22.4	21.5
Current A/C (%GDP)	-5.9	-6.3	-5.6	-1.5
Turkey				
GDP %	8.9	4.8	5.1	5.1
Inflation (%pavg)	9.3	9.6	6.1	4.5
Budget balance (%GDP)	-7.1	-8.9	-6.5	-
Public Debt (%GDP)	77	75.3	72.2	68.3
Current A/C (%GDP)	-5.3	-3.7	-3.4	-3.0

Sources: Deutsche Bank, "The Second Wave of EU Accession", (21 December 2004), p.1; Economist Intelligence Unit, "Country Report: Turkey", (January 2005), p.13.
Note: Actual figures for Turkey.

Inflation

With regards to inflation criterion, measured by the Consumer Price Index (CPI), Turkey currently overshot the criterion that states that inflation should not be higher than 1.5 percentage points above that of the average of the three lowest Euroland inflation figures. Nevertheless, inflation in Turkey fell from 18.4% in 2003, and an average of 77.5% in the 1990s, to a better than expected 9.3% in 2004, the lowest since 1975.[1] Turkey expects to bring the CPI down to 4% in 2007, aligning inflation with the Maastricht criterion. Tight monetary policy coupled with the operational independence of the Central Bank with the new Central Bank Law of 2001 played a significant role in this spectacular success.[2] The explicit inflation targeting policy to be adopted by the Central Bank in 2006, coupled with fiscal prudence, will lead to further decline in inflation and inflation uncertainty. It should be noted that except Croatia, Turkey and the other two countries currently overshot the Maastricht inflation.

Government Deficit and National Debt

Moving on to the public finance criteria of having a government deficit of no greater than 3% of Gross Domestic Product (GDP) and a national debt of 60% GDP, Turkey needs an improvement; the Public Sector Borrowing Requirement (PSBR) is projected at 6.3% of GDP in 2004 while the government targets a 0.5% government deficit by

---

[1] MorganStanley notes that "coupled with sound macroeconomic policies, productivity gains and investment growth are behind this phenomenal performance. Labor productivity in the manufacturing sector, for example, surged by 30% in the post-crisis period, raising the country's potential growth rate and lowering unit labor costs by 38.5% in the same period": MorganStanley, "Turkey: Jingle All the Way", (21 December 2004), p.2.

[2] On 1 January 2005, this also enabled the Central Bank to drop six zeroes from the Turkish Lira, the world's largest denomination banknote, to the new redenominated currency, Yeni Turk Lirasi (YTL), in a million-to-one conversion (1 YTL is approximately €0.55).

2007.[3] Parallel to this, gross public debt stock is projected to decline to 68.3% of GDP in 2007 (down from an estimated 78.4% in 2004). Nevertheless, Turkey is far from meeting the 60% Maastricht debt ceiling for general government gross debt. Turkey may have the potential to reduce its public debt due to a primary surplus (over 6.5% of GDP) and high privatization revenues which are expected to increase in the short-term.[4] Increase in primary surplus and decline in interest expenditures will certainly narrow the budget deficit which declined from 15.1% of GDP in 2001 to 7.1% of GDP in 2004. The government should reduce the size and the real interest rate on the government securities, and extend their maturity. Further, fiscal vulnerabilities such as the increasing social security deficit (4.6% of GDP) require further structural reforms in the near future. Among the four countries, Bulgaria and Romania are the best performers in general government balance and general government gross debt, respectively.[5]

Domestic Bond Yields

Convergence in long-term (10-year) domestic bond yields is another Maastricht criterion. The achievement of a primary budget surplus helped the government lower real domestic interest rates to 11% in 2004 (from an average of 33% in 2001).[6] The three-year average for Turkey's 30-year Eurobond yields averaged about 10.63% against a reference value of 6.4%.[7] The attainment of the interest rate criterion

[3] See SPO [State Planning Organization]., 2004. Pre-accession Economic Program. Available at http://www.dpt.gov.tr/files/Pep30112004i.pdf

[4] The primary surplus, fiscal surplus before interest payments, target was agreed with the IMF in 2001 to tackle a debt load of more than US$200 billion.

[5] It is interesting to note that as of end-2004; Germany, Belgium, Greece, Italy, Austria, Portugal, Southern Cyprus, and Malta failed to meet national debt criterion. Germany, France, Greece, Southern Cyprus, Malta, Poland, Slovakia, and England failed in regards to government deficit criterion (see Mahfi Egilmez, ".Buyurun Maastricht'e," *Radikal*, 28 April 2005).

[6] The compounded real interest rate for domestic debt stock was 11.9% in 2003.

[7] Deutsche Bank, "Turkish Banks," (23 December 2004), p.4.

is directly related to Turkey's future progress in monetary and fiscal consolidation. Unlike Romania and Turkey, Bulgaria and Croatia meet the interest rate criterion.[8]

Exchange rate stability

In terms of the exchange rate stability criterion, Turkey is vulnerable to unwanted exchange rate adjustments due to large external imbalances. There are two major indicators of external fragility. The first one is the high levels of the current account deficit (5.3% of GDP in 2004). The second is the ratio of short term foreign debt to Central Bank's international reserves which increased from 68.2% in 2003 to 81.4% in 2004.[9] The increased reliance on 'hot money' rather than non-debt creating foreign exchange flows such as Foreign Direct Investment (FDI) is one of the major sources of vulnerabilities in the capital account.[10] However, projected growth in the FDI, coupled with tourism receipts and an improving export capacity, may reduce external imbalances to sustainable levels in the medium term. Among the other three countries, Croatia is "vulnerable to market induced exchange-rate adjustment" due to its high external debt.[11]

Conclusion

Turkey currently does not fare well with regards to the five Maastricht criteria. Fiscal, monetary, and financial reforms should continue and should be implemented effectively. Among the four

---

[8] Deutsche Bank, "The Second Wave of EU Accession," (21 December 2004), p.6.

[9] See *Turkey in 2005 and Beyond: Macroeconomic Policy, Patterns of Growth and Persistent Fragilities* Available at http://www.gpn.org/

[10] Turkey performs poorly in attracting FDI. For example, FDI per capita is only €150 in Turkey whilst the same figure is €1,818 in Croatia, €456 in Bulgaria, €411 in Romania (Raymond James Securities, "FDI," 8 February 2005, p.2). The Opacity Index, constructed by Kurtzman Group, shows that Turkey needs substantial improvement in corruption, efficacy of the legal system, inadequate accounting and governance practices, and regulatory structures (ibid.). See also *Investor Turkey*, "FDI Attractiveness of Turkey," (July-Aug.-Sept. 2004), pp.64-74.

[11] Deutsche Bank, "The Second Wave of EU Accession," p.5.

countries examined, Bulgaria currently meets four of the five Maastricht criteria, missing inflation criterion which is expected to be met by 2007. Similarly, Croatia meets four criteria. The only missed criterion is fiscal deficit. Romania has the lowest debt levels than the other three countries but she is the worse of the four countries in terms of inflation.

Sources

1. Deutsche Bank, *"Turkish Banks"*, (23 December 2004).
2. idem.*"The Second Wave of EU Accession"*, (21 December 2004).
3. "Country Report: Turkey", in: *Economist Intelligence Unit*, (January 2005).
4. Egilmez, Mahfi, "Buyurun Maastricht'e," in: *Radikal*, (28 April 2005).
5. Independent Social Scientists Alliance, *Turkey in 2005 and Beyond: Macroeconomic Policy, Patterns of Growth and Persistent Fragilities,* Available at [http://www.gpn.org/]
6. "FDI Attractiveness of Turkey", in: *Investor Turkey*, (July-Aug.-Sept. 2004), pp.64-74.
7. Morgan, Stanley, *Turkey: Jingle All the Way*, (21 December 2004).
8. Raymond James, *Securities FDI,* (8 February 2005).
9. SPO [State Planning Organization]., 2004, *Pre-accession Economic Program*. [http://www.dpt.gov.tr/files/Pep30112004i.pdf]

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

ASPECTS ACTUELS DES INVESTISSEMENTS DIRECTS ÉTRANGERS EN ROUMANIE

Nicoleta-Dorina Racolța-Paina*
Veronica-Maria Mateescu**

Abstract
The aim of our article is to provide some explanations regarding the foreign direct investments (FDI) evolution in Romania. To this end, we present the current situation of FDI in Romania, analyzing the legislation in this domain, the inflow for 1996-2005, the structure of capital by country of origin, the main investments sectors, the attractiveness factors, the existent barriers and to what extent Romania remains attractive for low costs reasons and for the perspective of EU integration.

Introduction
L'internationalisation de l'activité des entreprises, quelque soit leur dimension, est devenue une constante de l'environnement économique actuel. Dans leur démarche d'internationalisation, les entreprises, en fonction de leur situation particulière, peuvent opter pour plusieurs formes d'internationalisation, une de plus répandues étant l'investissement direct étranger (IDE). Si, pour longtemps, les IDE avaient été associés surtout aux corporations multinationales, aujourd'hui les PME (Petites et Moyennes Entreprises) choisissent, elles aussi, cette forme d'internationalisation. À travers le temps les destinations des IDE ont varié, de même que les raisons qui avaient déterminé le choix d'une certaine destination. La chute et le démembrement du bloc communiste a engendré l'introduction des pays Est européens sur la carte des IDE, ce qui a entraîné l'intérêt des investisseurs étrangers pour ces pays et la préoccupation des pays

* Lecturer at the Faculty of European Studies, Babeş-Bolyai University Cluj
** Ph.D. Student in Economics of the University Marne-la-Valée, France

respectifs pour attirer le volume le plus grand possible d'IDE. Le besoin d'investissements directs étrangers est une caractéristique commune pour tous les pays post-communistes (économies en transition) où le besoin de capital et d'investissements ne peut pas être satisfait par les possibilités économiques internes, spécifiques des pays respectifs. Ainsi, les programmes d'investissements étrangers se trouvent parmi les principales méthodes utilisées par les gouvernements des états respectifs, en vue de privatiser l'économie (un des traits et buts majeurs des économies post-communistes), même si l'offre de privatisation a été différente en fonction de pays[1].

Un des sujets traités par la littérature de spécialité sur les IDE en Europe Centrale et de l'Est, envisage les facteurs d'attractivité et les raisons qui déterminent les investisseurs étrangers à choisir ces pays comme destinations pour leurs investissements. Ainsi, on peut identifier des avantages de localisation, de propriété ou d'internalisation, avantages qui diffèrent en fonction de l'étape traversée par le pays en question, en Voie du Développement de l'Investissement; aussi, les pays sont-ils différents en fonction des avantages compétitifs développés.

Une autre approche classifie les facteurs d'attractivité en *demand-oriented factors* et *supply-oriented factors*, les pays candidats étant caractérisés, en général, par *supply-oriented factors* et développant plutôt un type d'attractivité passive qu'active.

Un autre aspect traité par les professionnels du domaine des IDE en Europe Centrale et de l'Est est la liaison entre les IDE et la croissance économique des pays respectifs [Denuța (1998, Mazilu (1999), Bîrsan (2000), Bonciu et Dinu (2001), Ebbers (2003), Fabry et

---

[1] Florin Bonciu (« Investițiile străine directe în România: 1991-2001», *http://www.cerope.ro/pub/study42ro.htm* - la page web officielle du Centre Roumain de Politiques Économiques) considère que, pendant les années 1990, la Pologne, la Hongrie et la République Tchèque avaient attiré un volume plus grand d'IDE que la Roumanie, à cause de la politique de privatisation qui envisageait la privatisation partielle des utilités publiques, des banques d'État et des lignes aériennes, l'offre étant, à ce temps-là, plus réduite en Roumanie.

Zeghni (2003), Hunya (2003), Voinea (2003), etc.]. Même s'il n'y a pas d'opinion unanimement reconnue concernant l'existence d'une liaison de causalité entre les IDE et la croissance économique, les effets positifs des IDE sont toujours à prendre en compte : l'infusion de technologie, de savoir-faire, de compétences managériales, la création de nouveaux emplois, la croissance de la performance économique pour l'exportation dans les secteurs qui attirent plus d'investissements etc.

En ce qui concerne la situation des IDE en Roumanie, depuis 1990 et jusqu'à présent on a enregistré des étapes différentes quant au volume des IDE attirés et aux obstacles rencontrés par les investisseurs étrangers (le cadre législatif, la restructuration économique lente, le niveau insatisfaisant de l'infrastructure, l'instabilité politique, l'absence d'une culture managériale et de l'étique des affaires, la bureaucratie, la corruption, les droits conférés par loi, la qualité douteuse des informations sur l'état économique de la Roumanie, le climat des affaires etc. Certains de ces obstacles ont été surmontés, mais certains autres persistent encore, les facteurs d'attractivité restant pourtant les mêmes : les coûts faibles de la production, de la main d'œuvre, ainsi que la médiocre qualification de celle-ci, comme l'on peut constater par les investissements majoritaires dans le secteur industriel (ça souligne le rôle « d'atelier manufacturier » de la Roumanie) et par la présence d'un grand nombre d'investisseurs italiens dont les entreprises opèrent, particulièrement, en régime de *lohn*, dans des secteurs de forte main d'œuvre et de faible valeur ajoutée tels : le textile, le cuir ou l'industrie du bois ; l'opération en régime *lohn* est l'une des principales raisons d'attrait aussi pour les entreprises allemandes présentes en Roumanie.

Le but de notre article est de présenter la situation des IDE en Roumanie, au niveau de l'année 2005 (depuis le 1er mai 2004 la Roumanie se trouve dans une nouvelle situation de proximité géographique par rapport à l'Union Européenne), tout en analysant quelques aspects de la législation en vigueur (la définition des IDE,

les droits des investisseurs et les principales formes juridiques des entreprises pour lesquelles un investisseur étranger pourrait opter), le flux d'IDE pendant 1996-2005, la structure du capital en fonction du pays d'origine des principaux investisseurs, les principaux secteurs d'investissement, les facteurs d'attractivité et les obstacles existants pour les investisseurs étrangers et dans quelle mesure la Roumanie reste attractive pour les raisons mentionnées dans le paragraphe précédant.

La première partie de l'article présente des aspects généraux, liés à l'internationalisation de l'activité des entreprises, tout en présentant les possibles raisons et formes d'internationalisation d'une entreprise et un court historique de la constitution des multinationales (les principaux promoteurs des IDE), historique fait dans la perspective de l'origine des IDE et de leurs destinations.

La deuxième partie de l'article développe quelques considérations générales sur les IDE dans les pays de l'Europe de l'Est, envisageant l'intérêt croissant des investisseurs étrangers pour les pays de cette région, les facteurs d'attractivité et les obstacles existants pour les investisseurs étrangers (surtout dans le cas de la Roumanie), la problématique de l'existence d'une liaison de causalité entre les IDE et la croissance économique, en présentant également quelques effets positifs des IDE sur les pays Est européens.

Finalement, la troisième partie propose une brève analyse de la situation actuelle des IDE en Roumanie, prenant en considération quelques aspects de la législation en vigueur, le flux des IDE pendant 1996-2005, la structure du capital en fonction du pays d'origine des principaux investisseurs, les principaux secteurs d'investissement, les facteurs d'attractivité et les obstacles auxquels les investisseurs étrangers se heurtent.

L'internationalisation des entreprises : raisons, formes, court historique

L'apanage, pour longtemps, des grandes entreprises, l'internationalisation de l'activité est devenue, d'un phénomène

plutôt marginal, une constante de l'environnement économique actuel, soit qu'on parle des grandes entreprises ou des PME, étant vitale pour la compétitivité sur certains marchés[2].

Les raisons qui déterminent les entreprises à opter pour l'internationalisation de leur activité sont multiples. Ainsi, parmi les raisons souvent mentionnées dans la riche littérature sur l'internationalisation de l'activité des entreprises on peut trouver : la survie, la croissance des ventes, l'obtention des ressources et de l'expertise, la réduction des coûts, la diversification dans un domaine d'affaires significatif ou en développement, l'application de l'expertise sur de nouveaux marchés, le service et l'extension de la base des clients, la vente des produits déjà existants sur de nouveaux marchés[3] ; ou, selon les termes de Henri F. Henner[4], des raisons de marché (une meilleure adaptation aux demandes spécifiques d'un marché, le dépassement des barrières protectionnistes, tarifaires et non tarifaires etc.) et/ou des raisons de production (des coûts de production les plus réduits possibles, matières premières à des prix faibles, des salaires bas pour la main-d'œuvre qualifiée). Aujourd'hui, l'accès à des matières premières et à une main-d'œuvre aux prix faibles ne constitue plus le principal facteur d'attractivité pour les investisseurs étrangers[5] (même s'il est encore pris en calcul), tout pays, dans son effort d'attirer des investissements, devant offrir une gamme plus large de facteurs d'attractivité.

En général, une entreprise est considérée internationale au moment où elle développe des activités à l'étranger.[6] Une approche plus nuancée de l'internationalisation envisage le degré de celle-ci et

---

[2] W. Andreff *apud* Olivier Meier, *Management interculturel*, Paris, Dunod, 2004, p. 65.

[3] Robert J. Mockler, *Management strategic multinațional. Un proces integrativ pe bază de contexte*, Bucureşti, Ed. Economică, 2001, p. 114.

[4] Henri F. Henner, *Commerce international*, Paris, Montchrestien, 1992, pp. 296-297.

[5] Maria Bîrsan, *Integrare economică europeană*, vol. II, Maramureş, Ed. Fundației CDIMM, 1999, p. 21.

[6] Nicolae Al. Pop, Ionel Dumitru, *Marketing internațional*, Bucureşti, Ed. Uranus, 2001, p. 35.

la modalité de son évaluation, évaluation qui peut être quantitative (le nombre des filiales ouvertes à l'étranger, le volume des ventes, le chiffre d'affaires etc.) ou qualitative (par exemple, la mesure dans laquelle l'activité à l'étranger contribue significativement à la réalisation des objectifs de l'entreprise).[7] En plus, on fait d'habitude distinction entre l'entreprise internationale, multinationale, transnationale, multirégionale, transrégionale, globale et mondiale (N.-J. Adler, C. Nême, R.-J. Mockler, M.-E. Porter etc.), distinction basée sur plusieurs critères : les marchés d'opération, la structure de l'entreprise, le management, le(s) produit(s)/service(s) offert(s), le degré de contrôle hiérarchique de la société mère sur la (les) filiale(s) etc.

Dans les années '80, Porter[8] considérait que les principaux mécanismes à travers lesquels les entreprises pouvaient participer à l'activité internationale étaient : l'export, la licence et les investissements étrangers directs, l'entreprise choisissant la dernière forme seulement après avoir obtenu une certaine expérience sur les marchés respectifs, par l'intermédiaire des premières deux formes. Ou, autrement dit, on peut distinguer : export, unité stratégique de production/distribution, franchise, *joint-venture*, alliance stratégique, fusions, acquisition[9], investissements étrangers directs etc.

Henner[10] distingue trois vagues dans la constitution des multinationales et il commence sa classification après la seconde Guerre Mondiale. La première vague, entre 1950 et 1965 environ, correspond aux flux d'investissements des firmes américaines en Europe de l'Ouest ; la deuxième vague placée de 1965 (environ) à 1975, au cours de laquelle les firmes américaines et européennes tendent à créer des unités de production dans les « pays à bas

---

[7] *Ibidem*, p. 35.

[8] Michael E. Porter, *Competitive Strategy. Techniques for Analyzing Industries and Competitors*, New York, The Free Press, 1980, p. 275.

[9] Camelia Dumitriu, *Management internațional şi relații economice internaționale*, Iaşi, Ed. Polirom, 2000, pp. 46-53.

[10] Henner, *op. cit.*, p. 294.

salaires » d'Asie du Sud-est ; et la troisième vague qui débute en 1978 jusqu'à présent – celle-ci étant composée de deux éléments : un réinvestissement aux États-Unis, marqué par la fermeture des filiales américaines en Europe, l'investissement des firmes européennes et japonaises dans des filiales aux États-Unis ou au Canada et l'émergence des firmes multinationales du Tiers Monde : certaines firmes des Nouveaux Pays Industrialisés commencent à investir dans les pays industrialisés pour mieux pénétrer le marché américain et contourner les obstacles non tarifaires.

Investissements directs étrangers – considérations générales sur les pays de l'Europe de l'Est

À la classification d'Henner on doit nécessairement ajouter l'apparition des pays Est européens sur la carte des IDE, ce qui explique la résurrection de l'intérêt pour les IDE, tant de la part des investisseurs étrangers, que de la part de ces pays, surtout de la part de ceux qui sont candidats à intégrer l'Union Européenne. Car, même s'il n'y a pas d'opinion unanimement reconnue concernant l'existence d'une liaison de causalité entre les IDE et la croissance économique, les pays candidats pourraient obtenir des avantages à la suite de l'attraction des IDE, par l'accès à la modernisation, par le contact avec les meilleures pratiques occidentales, par le développement du commerce étranger et l'obtention d'aide externe et de l'assistance financière[11]. Autres effets positifs des IDE sont aussi : l'infusion de technologie, de savoir-faire, de compétences managériales, (selon le cas) la croissance de la performance économique à l'exportation pour les secteurs où sont attirés des

---

[11] Nathalie Fabry, Sylvain Zeghni, « Attractiveness and Inward-Foreign Direct Investment Pattern in The Candidate Countries » dans Bîrsan, Maria; Paas, Tiiu (eds.) *Competitiveness of National Economies and the Efficient Integration into the European Union*, Cluj-Napoca, EFES, 2003, p. 139.

IDE[12], la création de nouveaux emplois, et donc implicitement, la croissance de la qualité de la vie[13].

L'intérêt des investisseurs étrangers pour ces pays relativement nouveaux sur la carte des IDE, est démontré aussi par les résultats du Rapport Mondial sur les Investissements, 2005, conformément auxquels en 2004, le flux des investissements vers ces pays a enregistré, pour la quatrième année, une croissance : c'est la seule région (plus exactement, y sont inclus les pays de l'Europe de Sud-est et les pays de la Communauté des États Indépendants) qui ait enregistré une croissance importante, dans les conditions du déclin général des IDE sur le plan mondial[14].

Le besoin d'investissements directs étrangers est une caractéristique commune de tous les pays post-communistes (économies en transition) où le besoin de capital et d'investissements ne peut pas être satisfait par les possibilités économiques spécifiques des pays respectifs[15]. Dans son analyse des principales composantes des économies post-communistes (économies en transition), Leslie Holmes inclue les programmes d'investissements étrangers parmi les principales méthodes utilisées par les gouvernements des états

[12] Leslie Holmes, *Postcomunismul*, Iaşi, Institutul European, 2004, pp. 338-341. Les résultats de l'étude de V. Boscaiu et A. Mazilu (« Evaluarea impactului investițiilor străine directe asupra industriei prelucrătoare », *http://www.cerope.ro/pub/study41ro.htm*) illustrent la croissance de l'intensité de l'exportation dans l'industrie manufacturière roumaine, suite à la présence des IDE dans ce secteur. Aussi, Gábor Hunya ((« FDI – Led Economic Growth in Romania? » dans Bîrsan, Paas, (eds.) *op. cit.*, pp. 174-175) a-t-il montré qu'une présence significative des IDE dans un certain secteur attire une performance à l'exportation en croissance du secteur respectif.

[13] E.-I. Anghel, *Investițiile străine directe, modernizarea şi înzestrarea cu factori*, vol. 19, Bucureşti, Centrul de Informare şi Documentare Economică, 2002, p. 7.

[14] United Nations Conference on Trade and Development, « World Investment Report. Transnational Corporations and the Internationalization of R&D », United Nations, New York and Geneva, 2005, *http://www.unctad.org/en/docs/wir2005_en.pdf*.

[15] Ioan Denuța, *Investițiile străine directe*, Ed. Economică, Bucureşti, 1998, p. 89.

respectifs, en vue de la privatisation de leur économie (un des traits et buts majeurs des économies post-communistes).

L'Agence Roumaine pour des Investissements Étrangers (institution de spécialité du Gouvernement roumain pour les IDE en Roumanie) considère la politique qu'elle développe pour attirer des IDE, comme un processus qui peut supplémenter le besoin interne de capital, comme une source pour implémenter de nouvelles technologies, de savoir-faire et un management moderne et – un aspect considéré important – comme une modalité de changer les mentalités et les comportements sociaux[16].

Il y a plusieurs facteurs d'attractivité qu'un pays a ou peut développer pour attirer des IDE. Ainsi, il y a *demand-oriented factors* : la dimension et la croissance du marché, l'accès sur des marchés locaux et régionaux, les besoins et les préférences spécifiques des consommateurs etc., mais il y a aussi *supply-oriented factors* : le niveau de la compétition sur le marché local, les matières premières et la disponibilité des ressources, la qualification, les habilités, l'expérience et la productivité de la main d'œuvre, le marché du travail local etc.[17] Une autre approche distingue entre avantages de localisation, avantages de propriété et avantages d'internalisation[18], qui sont différents en fonction de l'étape que le pays respectif traverse, en Voie du Développement de l'Investissement (VDI)[19] ; de même, les pays sont différents en fonction des avantages compétitifs développés[20]. La VDI (modèle proposé par Dunning et Narula) est utilisée par Haico Ebbers dans le but d'établir si les pays candidats

---

[16]Romanian Agency for Foreign Investments, « The Legal and Institutional Framework Regarding Foreign Investment », *Romanian Business Digest*, 2004, *http://www.tipograph-21.ro/RBD/Articles*.

[17] Fabry, Zeghni, *op. cit.*, p. 143.

[18] Dunning *apud* Haico Ebbers, « The Investment Development Path and FDI Competition in Central and Eastern Europe; A conceptual Model », dans Bîrsan, Paas, (eds), *op. cit.*, p. 116.

[19] Ebbers, *op. cit.*, pp. 115-136 *passim*.

[20] M. Porter *apud* Anda Mazilu, *Trasnaționalele şi competitivitatea*, Ed. Economică, Bucureşti, 1999, p. 208.

sont en concurrence ou sont complémentaires dans leur effort d'attirer des IDE. Son analyse place la Roumanie, théoriquement, dans la phase mature de la deuxième étape de la VDI, étape caractérisée par une attractivité générée par des avantages spécifiques de localisation et représentés par des ressources naturelles. Mais, empiriquement, la Roumanie se situe entre la deuxième et la troisième étape de la VDI[21], étape où les avantages recherchés sont les coûts faibles du travail et l'existence d'une main d'œuvre fort qualifiée. Ces résultats ressemblent à ceux trouvés par Valentin Cojanu[22] et qui prouvaient que la Roumanie (au niveau des années 1999) se situait dans l'étape du développement basé sur la dotation des facteurs de production et sur le coût encore plus faible de ceux-ci.

Relatif à la situation des IDE en Roumanie, depuis 1990 et jusqu'à présent on a enregistré des étapes différentes en ce qui concerne le volume des IDE attirés et les obstacles que les investisseurs étrangers avaient rencontrés (le cadre législatif, la restructuration économique lente, le niveau insatisfaisant de l'infrastructure, l'instabilité politique, l'absence d'une culture managériale, l'étique des affaires[23], la bureaucratie, la corruption, les droits conférés par loi, la qualité douteuse des informations sur l'état économique de la Roumanie[24], le climat des affaires[25] etc. ; une partie de ces obstacles a été surmontée, mais une partie persiste encore), les facteurs d'attractivité restant pourtant les mêmes : les coûts faibles de production, de la main d'œuvre et sa haute qualification, ainsi que la perspective de l'intégration de l'Union Européenne.

---

[21] Ebbers, *op. cit.*, p. 133.

[22] Mazilu, *op. cit.*, p. 209.

[23] Maria Bîrsan, « Foreign Direct Investment in Romania », *Caietele Tranziției*, Institutul de Antroplogie Culturală, Facultatea de Studii Europene, Universitatea Babeş-Bolyai, Cluj-Napoca, 2000, p. 44.

[24] Denuța, *op. cit.*, pp. 159-163.

[25] Bonciu, *loc. cit.*

Le Baromètre des Investisseurs Étrangers[26] indiquait, en mai 2005, les facteurs négatifs suivants (à moyen terme) pour l'activité des entreprises avec capital étranger implantées en Roumanie : la fluctuation du cours d'échange (26%), l'instabilité législative (20%), la corruption (16%), la bureaucratie (14%), l'adoption des normes de l'UE pour le domaine de l'entreprise (10%) et la croissance des salaires dans la perspective de l'intégration de l'UE (6%) : 2% de ceux qui ont été questionnés indiquant un autre facteur. Partiellement liés à ces facteurs négatifs, les investisseurs étrangers présents en Roumanie considèrent que la priorité absolue dans la politique économique doit être, pour le Gouvernement de la Roumanie, la fiscalité (réduction des taxes, stabilité - 11%), le cadre législatif (stabilité, cohérence - 10%), la stimulation du milieu des affaires (9%), la croissance du niveau de vie (8%), l'effacement de la corruption (6%), l'impulsion des investissements étrangers (3%), la réduction de la bureaucratie (2%) etc.

Les investissements étrangers en Roumanie – une perspective au niveau de l'année 2005

La législation roumaine[27] définit *l'investissement direct étranger* comme : « la participation dans la création ou l'expansion de tout type d'entreprise légale, l'achat des actions ou parties sociales dans une entreprise, en exceptant les investissements de portefeuille, ou l'établissement et l'expansion dans la Roumanie d'une filiale d'une entreprise étrangère par : contribution financière en monnaie nationale ou convertible, contribution en nature – biens fixes ou mobiles, tangibles ou intangibles, participation à la croissance de la valeur de l'entreprise par tout moyen légal. »

---

[26] The Gallup Organization, Romania, « Barometrul Investitorilor Străini », mai 2005, *http://www.gallup.ro*.

[27] ***, L'Ordonnance Gouvernementale d'Urgence no. 92/1997, approuvée par la Loi no. 241/1998, *http://www.arisinvest.ro*, (la page web officielle de L'Agence Roumaine pour Investissements Étrangers), 2004.

Il y a aussi *l'investissement de portefeuille* qui consiste dans l'acquisition des actions sur le le marché du capital, organisé et régularisé : ce type d'investissement ne permet pas la participation directe dans l'administration des entreprises.

L'investisseur étranger est défini comme une personne juridique ou physique qui est délocalisée ou qui a des quartiers généraux permanents en Roumanie ou à l'étranger et qui investit en Roumanie sous une des formes mentionnées ci-dessus.

Les droits des investisseurs étrangers. Les investisseurs qui n'ont pas de résidence en Roumanie, ont les mêmes droits que les investisseurs résidentes. Il n'y a pas de limite pour la participation étrangère dans des entreprises ; un investisseur étranger peut créer ou acheter intégralement une entreprise roumaine. Le capital d'un investisseur étranger peut prendre plusieurs formes : devise, équipement, services, droits ou propriété intellectuelle, savoir-faire et expertise en management ou le profit d'autres affaires en Roumanie.

Les investisseurs qui n'ont pas de résidence en Roumanie ont le droit de transférer à l'étranger, sans aucune restriction, après avoir payé les taxes et les impôts locaux, les revenus suivants en devise forte: les dividendes ou le profit obtenu(s) par une entreprise, personne juridique roumaine, dans le cas où ils en sont actionnaires ou partenaires; les revenus obtenus par un type d'association partenariale et les revenus dégagés de la vente des actions ou des parties sociales; les montants issus de la liquidation de l'entreprise (en conformité avec la Loi des sociétés commerciales n°. 31/1990 et ses amendements) ou de la liquidation de l'entreprise (en conformité avec la Loi de la faillite n° 64/1995 et ses amendements) ; les montants obtenus en compensation pour l'expropriation ou autre mesure équivalente; autres revenus, en concordance avec le type d'investissement. En plus, ils bénéficient d'un régime honnête, offert

soit par la législation roumaine ou par l'accord pour la garantie réciproque des investissements, soit par une autre loi.[28]

Les principales formes juridiques des entreprises[29] en Roumanie sont :

1. la S. R. L. – Société à Responsabilité Limitée – est la forme la plus « populaire » parmi les investisseurs locaux et étrangers à cause des formalités administratives réduites, une flexibilité plus grande par rapport à d'autres types d'entreprises et un capital initial réduit : 2.000.000 ROL (environ 70 $). Le numéro maximal d'actionnaires est de 50. Une S.R.L. est administrée par un ou plusieurs administrateur(s), roumaine(s) ou étranger(s), ayant des pouvoirs limitées/pleines. Il n'y a aucune distinction entre les entreprises avec/sans capital étranger.

2. la S. A. (Société par actions**)** – le capital minimum de constitution : 25.000.000 ROL (environ 700 $) ; il n'y a pas de numéro maximum d'associés, pourtant l'entreprise doit avoir au minimum 5 actionnaires. Dès la constitution d'une S.A., on doit souscrire au moins 30% du capital en actions ou 100% pour les contributions en nature. Les opérations quotidiennes d'une S.A. sont gérées par un ou plusieurs membres du comité directeur qui sont ou non des actionnaires dans l'entreprise.

3. le Partenariat limité – les obligations du partenariat sont garanties par le capital et par la responsabilité illimitée commune pour tous les partenaires illimités; les partenaires limités sont responsables seulement en fonction de la valeur de leur contribution en actions.

---

[28] *http://www.arisinvest.ro*, actualisé la dernière fois en 2004 (la date exacte n'est pas précisée).

[29] ***, La Loi de Sociétés Commerciales No.31/1990 republiée et amendée ultérieurement et l'Ordonnance d'Urgence n°. 76/2001 regardant la simplification de certaines formalités administratives pour la registration et l'autorisation des opérations d'affaires (parmi cette ordonnance a été établie une procédure unifiée pour l'autorisation et la registration des affaires).

4. le Partenariat général – les obligations du partenariat sont garanties par le capital et par la responsabilité commune illimité de tous les partenaires.

5. les bureaux représentatifs (*Representative Offices*) – créés par des entreprises étrangères pour développer des activités non profit (publicité, étude du marché) au nom de la société-mère. Ces bureaux ne peuvent pas développer des activités commerciales en Roumanie.

6. Filiales des entreprises étrangères – celles-ci n'ont d'identité légale propre ou capital propre d'actions. Une filiale, étant une unité de la société-mère, ne doit pas dépasser le but de l'activité de celle-ci.

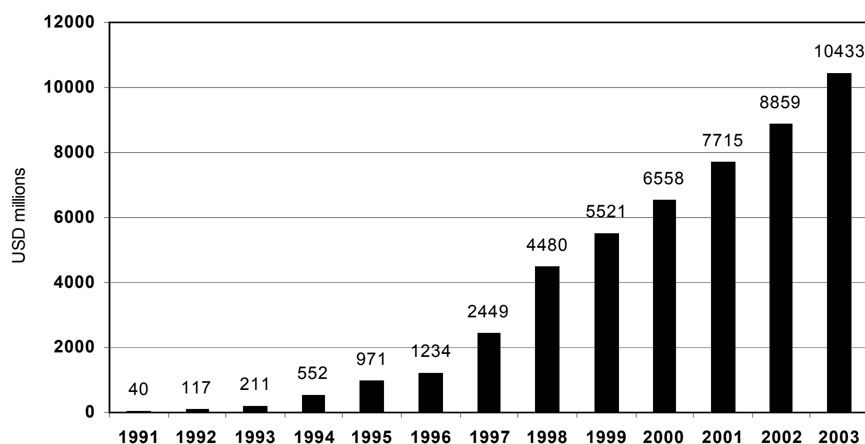
7. le Consortium – c'est un accord pour réaliser une *joint-venture* (en roumain : *contract de asociere în participațiune*), accord qui permet aux différentes parties d'agir ensemble pour réaliser un but commun (d'affaires) ; en Roumanie, cette forme n'engendre pas la formation d'une entité légale. En général, une seule partie est chargée de la comptabilité du *joint venture*.[30]

Les données statistiques offertes par L'Agence Roumaine pour Investissements Étrangers (ARIS) prouvent que durant la période 1996-2003 on a enregistré deux étapes dans le flux d'investissements étrangers : 1996-2000 et 2001-2003. La première étape est caractérisée par une diminution du flux, à cause des changements défavorables dans la législation et du cadre institutionnel pour les investisseurs étrangers. Ces changements ont engendré une attitude de rejet de la part des investisseurs étrangers envers le climat d'affaires roumain. La deuxième étape est marquée par une croissance importante du flux d'investissements étrangers (du point de vue du capital enregistré et du nombre des entreprises), grâce au développement positif de l'économie et à une politique de promotion des investissements étrangers qui ont changé la perception (négative) des

---

[30] David & Associates, « Legal Considerations for Foreign Investors », *Romanian Business Digest*, *http:// www.tipograph-21.ro/RBD/Articles*, 2004, p. 1.

investisseurs étrangers sur le climat d'affaires roumain. Le graphique suivant est représentatif pour la tendance ascendante du flux des investissements étrangers en Roumanie :



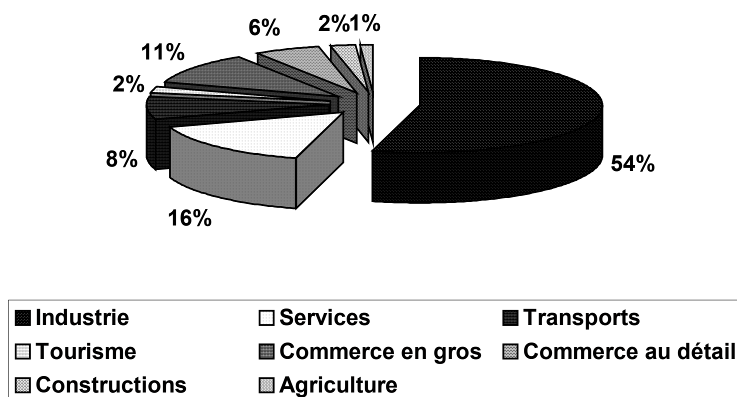
Graphique n° **1 : Le flux d'investissements étrangers en Roumanie dans la période 1991-2003**
Source : La Banque Nationale de la Roumanie, *apud* Romanian Agency for Foreign Investment, « Statistical Data Regarding Foreign Investment in Romania », http://www.aneir-cpce.ro/chapter5/fiif1.htm, mai 2005.

Comme on peut voir dans le graphique n° 2, le principal secteur d'activité pour les investissements étrangers dans la période 1991-2003 est l'industrie, suivie, à grande distance, par les services. On peut déduire, donc, que les investisseurs sont attirés en Roumanie surtout par des avantages de coûts, la Roumanie restant encore un pays attractif pour sa qualité « d'atelier manufacturier »[31]. Celle-ci n'est pas une situation spécifique seulement pour la Roumanie, mais pour la grande majorité des pays candidats. Ces pays sont attractifs pour les investisseurs étrangers plutôt par la perspective de leur intégration à l'Union Européenne et par des

[31] Fabien Saunier, « Investissements Directs Etrangers en Roumanie », Ambassade de France en Roumanie, Mission Economique, *http://www.missioneco.org/economie/*, 25 août 2004.

salaires bas, corrélés avec la qualification et la productivité de la main-d'œuvre, que par la demande (car il y a des dimensions réduites du marché et le déclin démographique). On peut parler, donc, plutôt d'une attractivité passive qu'active[32] ; ce type d'attractivité peut être avantageuse à moyen terme, mais elle n'est pas compatible avec l'intégration à l'Union Européenne et avec la convergence régionale qui devrait créer des conditions pour un développement durable.[33]

Une autre explication pour l'investissement prédominant dans l'industrie est celle que, à cause de l'intérêt du régime communiste pour le développement massif de l'industrie, les grandes entreprises de ce secteur d'activité, détenues par l'État, ont été les plus affectées, après la chute du communisme, par le besoin de privatisation. Ainsi, le volume le plus grand des investissements est attiré par ces larges entreprises.



Graphique n° 2 : La structure des investissements étrangers en fonction du secteur d'activité, 1991-2003
Source : l'Office National du Registre du Commerce (Roumanie) *apud* Romanian Agency for Foreign Investment, « Statistical Data Regarding Foreign Investment in Romania », http://www.aneir-cpce.ro/chapter5/fiif1.htm, mai 2005.

[32]Fabry, Zeghni, *op. cit.*, p. 149.
[33] *Ibidem*, p. 145.

Même si les évidences suggèrent que la Roumanie est un pays attractif surtout pour des raisons de coûts et de qualification de la main-d'œuvre (*supply-oriented factors*), A.R.I.S. présente sur sa page *web* les facteurs d'attractivités suivants : le statut d'économie de marché fonctionnelle ; la dimension du marché; la possibilité d'avoir accès à d'autres marchés par sa position commerciale stratégique, le réseau des télécommunications mobiles en système GSM bien développé, la richesse des ressources naturelles, une infrastructure industrielle bien développée, la législation d'investissement basée sur le libre accès, non discriminatoire aux marchés et aux secteurs économiques, l'accès à l'UE ; des coûts compétitifs, la main-d'œuvre bien qualifiée, avec des connaissances solides dans les domaines de la technologie IT et engineering etc.[34] (on peut y retrouver, donc, aussi des facteurs d'attractivité *demand-oriented* que *supply-oriented*). En plus, le quota unique de l'impôt sur le profit (qui a été réduit de 25% à 16% pour l'année 2005) a été conçu comme un stimulus pour attirer les investisseurs étrangers. Pourtant, en janvier 2005, les IDE se situaient à 89 millions €, donc moins de 48% qu'en janvier 2004. Le directeur exécutif du Conseil des Investisseurs Étrangers en Roumanie appréciait, dans une interview prise en mai 2005, que les investisseurs étrangers ne sont pas attirés tant par l'impôt sur le profit que par la stabilité et la prédictibilité du système des taxes et des impôts, qui, à côté de la corruption, des barrières administratives et des changements législatifs fréquents représentent d'anciens points faibles de la Roumanie[35]. La situation n'a pas beaucoup changé jusqu'au mois de juillet 2005, quand l'Office National du Registre du Commerce rapportait une valeur de 292 millions euros du capital social souscrit par les entreprises étrangères, moins de 20% qu'en juillet 2004[36].

---

[34] *http://www.arisinvest.ro*, à la date de 24 juin 2005.

[35] Iulian Bortoş, « Banii străini aşteaptă semnalul pentru o aterizare sigură », *Capital,* no. 19, 12 mai 2005.

[36]Cristina Cuncea, Georgiana Stavarache, « Investițiile străine au crescut cu numai 7% în şapte luni », *Ziarul Financiar,* 12 septembre 2005.

Dans les statistiques offertes par l'Office National du Registre du Commerce (Roumanie) relatives à la classification des entreprises avec participation étrangère, en fonction du pays d'origine (le top des premières 10 entreprises, pendant les années 1991-2003), on peut identifier (dans l'ordre du montant du capital souscrit) : la Hollande, la France, l'Allemagne, les États-Unis, l'Italie (avec le plus grand nombre d'entreprises – 14.157), les Antilles hollandaises, l'Autriche, le Chypre, la Turquie et la Grande Bretagne.[37] À la mi-2004, les Pays-Bas détenaient encore la première place parmi les investisseurs étrangers en Roumanie. Mais, en général, le Registre du Commerce Roumain prend en considération seulement le capital initial souscrit tout en excluant les investissements financés par emprunt bancaire ou profits réinvestis (sauf s'ils sont capitalisés), donc il est possible qu'il y ait une sous-estimation du stock des IDE en Roumanie[38]. La prévision des IDE pour l'année 2004 estimait un volume d'IDE d'environ 3,5-4 Mds USD, nettement supérieur à celui enregistré en 2003 (1,574 Mds USD[39]) et à celui prévu pour 2005 (environ 2,500 Mds USD[40] ou 3,2-3,8 Mds euros, conformément aux prévisions d'A.R.I.S.[41]). La croissance des IDE pour l'année 2004 est due, en principal, à la privatisation en juillet 2004 de Petrom S.A. (rachetée par l'investisseur autrichien OMV) qui, en 1999 figurait parmi les premières les plus larges multinationales dans le domaine minier et extractif ayant le siège en Roumanie[42]. Mais, on doit relativiser la progression des IDE. Bien que la Roumanie s'avère être le premier

[37]Romanian Agency for Foreign Investment, « Statistical Data Regarding Foreign Investment in Romania », *http://www.aneir-cpce.ro/chapter5/fiif1.htm*, mai 2005.

[38] Saunier, *loc. cit.*, 05 octobre 2004.

[39] *Ibidem.*

[40] Direction Générale du Trésor et de la Politique Économique, Ministère de l'Économie, des Finances et de l'Industrie, « DGTPE Statistiques Roumanie », *http://www.missioneco.org/economie/*, mai 2005, p. 1.

[41] Cuncea, Stavarache, *op. cit.*

[42] UNCTAD WID Country Profile, « Romania »,
http://www.unctad.org/Templates/Page.asp?intItemID =3198&lang=1United nations Conference, p. 11.

pays de l'Europe du Sud-est à franchir la barre symbolique des 10 Mds USD d'IDE en stock, elle reste en deçà des autres entrants avec seulement 450 USD d'IDE par an et par habitant.[43]

Si les investisseurs hollandais, français, allemands (partiellement), américains sont attirés particulièrement par les grandes entreprises, les investisseurs italiens sont attirés plutôt par les PME, ayant un nombre record des structures implantés en Roumanie[44], en 30 septembre 2004 étant enregistrées 16.176 entreprises italiennes[45]. Sur la page web officielle de l'Ambassade Italienne à Bucarest figurait, le 1 août 2005 le chiffre de 17.100 entreprises italiennes en Roumanie, dans la plupart des PME, dont on estime que seulement 4.000 sont actives[46]. En général, les investisseurs italiens sont attirés par les avantages des opérations en régime de *lohn*, s'orientant surtout sur des secteurs de forte main d'œuvre et de faible valeur ajoutée tels : le textile, le cuir ou l'industrie du bois[47]. Les investissements italiens sont concentrés principalement, dans les départements du nord-ouest de la Roumanie et particulièrement, dans le département de Timiş où, un vrai district industriel a été mis en place[48]. L'opération en régime *lohn* et l'attrait pour les PME comme forme d'entreprise sont

[43] Saunier, *loc. cit.*, 05 octobre 2004.

[44] *Ibidem*, 25 août 2004.

[45] L'Office National du Registre du Commerce, « Classification of Companies by Foreign Direct Investment by the Investors'Country of Origin, Balance Account at 30 September 2004 », dans *Statistical Data Regarding Foreign Investment in Romania, http://www.aneir-cpce.ro/chapter5/fiif1.htm*, mai 2005.

[46] Ambasada Italiei la Bucureşti, Biroul Economico-Comercial, « Relații economice şi comerciale între Italia şi România », *http://www.ambitalia.ro/commerciale_ro.html*, à la date de 1 août 2005.

[47] Saunier, *loc. cit.*, 25 août 2004. Cette information peut aussi être retrouvée sur la page web de l'Ambassade Italienne à Bucarest, *http://www.ambitalia.ro/commerciale_ro.html*.

[48] Ambasada Italiei la Bucureşti, Biroul Economico-Comercial, *loc. cit.*

caractéristiques aussi pour les investisseurs allemands[49], de même que, dans une moindre mesure, pour les investisseurs italiens.

Mais, les investisseurs italiens sont présents en Roumanie aussi par des *joint-ventures* (ex. : RARTEL – avec la participation Telespazio, IPACRI Romania – avec la participation ELSAG) et, plus récemment, le Group Pirelli Telecom a réalisé à Slatina deux investissements importants dans la production de pneus, tandis que le Group Tenaris Dalmine a racheté la société Silcotub Zalău. En plus, on remarque une nouvelle tendance chez les partenaires italiens : l'intérêt accru des investisseurs institutionnels pour la Roumanie, intérêt traduit par un bon nombre de banques et d'instituts de crédit y fonctionnant (la Banque Italo-Roumaine – la propriété du Group Veneto Banca, Banca di Roma, Unicredit Roumanie, San Paolo IMI Roumanie, Daewoo Bank etc.)[50]. La même situation peut être rencontrée dans le cas des investisseurs allemands où, à coté des PME, il y a des investissements des grandes entreprises (Heidelberg, Siemens, Ruhrgaz, Metro, Selgros etc.)[51].

On peut voir, donc, que l'Union Européenne occupe une place très importante dans les investissements étrangers attirés par la Roumanie. En plus, la Communauté est la principale destination pour les exportations roumaines (72,5% de celles-ci ont été destinées, en moyenne, dans les cinq dernières années, vers l'UE[52]). Mais, ces relations étroites avec l'UE peuvent constituer un obstacle dans le développement d'une attractivité active pour les investisseurs étrangers, car elles empêchent la coopération régionale (une des sources d'attractivité active)[53], la Roumanie restant attractive, surtout

[49] Saunier, *loc. cit.*, 25 août 2004, p. 2.
[50] Ambasada Italiei la Bucureşti, Biroul Economico-Comercial, *loc. cit.*
[51] Saunier, *loc. cit.*, 25 août 2004, p. 2.
[52] Direction Générale du Trésor et de la Politique Economique, Ministère de l'Économie, des Finances et de l'Industrie, *loc. cit.*, p. 4.
[53] Fabry, Zeghni, *op. cit.*, p. 145.

par la perspective de son adhésion à l'Union Européenne[54] et par des avantages de coûts, que par son marché national et régional (une attractivité passive, donc).

Conclusions

L'analyse de la situation actuelle des IDE en Roumanie relève d'une législation favorable pour les investisseurs étrangers, dans la perspective de l'égalité de traitement par rapport aux investisseurs roumains et par les droits accordés ; aussi, les investisseurs étrangers peuvent-ils opter pour plusieurs formes juridiques des entreprises, la plus répandue étant la S.R.L., à cause des formalités administratives réduites, d'une flexibilité plus grande par rapport à d'autres types d'entreprises, un capital initial réduit et l'absence de toute distinction entre les entreprises avec/sans capital étranger. Relatif au flux des IDE, on peut remarquer l'existence de deux grandes étapes pour la période 1996-2003 : 1996-2000 et 2001-2003. La première étape était caractérisée par une diminution du flux, à cause des changements défavorables dans la législation et du cadre institutionnel pour les investisseurs étrangers, tandis que la deuxième étape était marquée par une croissance importante du flux d'investissements étrangers, grâce au développement positif de l'économie et à une politique de promotion des investissements étrangers qui ont changé la perception (négative) des investisseurs étrangers sur le climat des affaires roumain. Une croissance importante des IDE est enregistrée aussi en 2004, croissance due surtout à la privatisation de Petrom S.A. (une des premières et des plus larges multinationales dans le domaine minier et extractif, siégeant en Roumanie) ; pour l'année 2005 un volume des IDE inférieur à celui de l'année 2004 étant prévu, situation confirmée par la valeur du capital social souscrit par les entreprises étrangères, valeur qui, en juillet 2005, était inférieure à celle de juillet 2004.

---

[54] *Ibidem*, p. 148. La même conclusion peut être rencontrée chez Saunier, *loc. cit.*, 25 août 2004, p. 4.

En ce qui concerne les facteurs d'attractivité, ils restent les mêmes que pour les périodes précédentes à celle envisagée par notre article : les coûts faibles de production, de la main d'œuvre et la qualification de celle-ci, comme l'on peut constater par le grand nombre des investissements dans le secteur industriel, ce qui souligne le rôle « d'atelier manufacturier » de la Roumanie, et par la présence d'un grand nombre d'investisseurs italiens et allemands qui possèdent des entreprises en régime de lohn.

Les principaux obstacles pour les investisseurs étrangers en Roumanie, au niveau de l'année 2005 sont : la fluctuation du cours d'échange, l'instabilité législative, la corruption, la bureaucratie, l'adoption des normes de l'UE pour le domaine de l'entreprise et la croissance des salaires dans la perspective de l'intégration de l'UE.

Bibliographie

1. ***, L'Ordonnance Gouvernementale d'Urgence no. 92/1997, approuvée par la Loi n°. 241/1998, *http://www.arisinvest.ro*, (la page web officielle de L'Agence Roumaine pour Investissements Étrangers), 2004.
2. ***, La Loi de Sociétés Commerciales No.31/1990 republiée.
3. Ambasada Italiei la Bucureşti, Biroul Economico-Comercial, «Relații economice şi comerciale între Italia şi România», *http://www.ambitalia.ro/commerciale_ro.html*, à la date de 1 août 2005.
4. Anghel, E.-I., *Investițiile străine directe, modernizarea şi înzestrarea cu factori*, vol. 19, Bucureşti, Centrul de Informare şi Documentare Economică, 2002.
5. Bîrsan, Maria*, Integrare economică europeană*, vol. II, Maramureş, Ed. Fundației CDIMM, 1999.
6. Bîrsan, Maria, « Foreign Direct Investment in Romania », *Caietele Tranziției*, Institutul de Antroplogie Culturală, Facultatea de Studii Europene, Universitatea Babeş-Bolyai, Cluj-Napoca, 2000, pp. 43-46.

7. Bonciu, Florin, « Investițiile străine directe în România: 1991-2001 », *http://www.cerope.ro/pub/study42ro.htm*.
8. Bortoş, Iulian, « Banii străini aşteaptă semnalul pentru o aterizare sigură », *Capital,* no. 19, 12 mai 2005.
9. Boscaiu, Voicu ; Mazilu, Anda, « Evaluarea impactului investițiilor străine directe asupra industriei prelucrătoare », *http:// www.cerope.ro/pub/study41ro.htm*.
10. Cuncea, Cristina; Stavarache, Georgiana, « Investițiile străine au crescut cu numai 7% în şapte luni », *Ziarul Financiar,* 12 septembre 2005.
11. David & Associates, « Legal Considerations for Foreign Investors », *Romanian Business Digest*, *http:// www.tipograph-21.ro/RBD/Articles*, 2004.
12. Denuța, Ioan, *Investițiile străine directe*, Ed. Economică, Bucureşti, 1998.
13. Direction Générale du Trésor et de la Politique Economique, Ministère de l'Économie, des Finances et de l'Industrie, « DGTPE Statistiques Roumanie », *http://www.missioneco.org/economie/*, mai 2005.
14. Dumitriu, Camelia, *Management internațional şi relații economice internaționale*, Iaşi, Ed. Polirom, 2000.
15. Ebbers, Haico, « The Investment Development Path and FDI Competition in Central and Eastern Europe; A conceptual Model », dans Bîrsan, Maria; Paas, Tiiu (eds.), *Competitiveness of National Economies and the Efficient Integration into the European Union*, Cluj-Napoca, EFES, 2003, pp. 115-136.
16. Fabry, Nathalie; Zeghni, Sylvain, « Attractiveness and Inward-Foreign Direct Investment Pattern in the Candidate Countries » dans Bîrsan, Maria; Paas, Tiiu (eds.), *Competitiveness of National Economies and the Efficient Integration into the European Union*, Cluj-Napoca, EFES, 2003, pp. 137-152.
17. Henner, Henri F., *Commerce international*, Paris, Montchrestien, 1992.
18. Holmes, Leslie, *Postcomunismul*, Iaşi, Institutul European, 2004.

19. *http://www.arisinvest.ro*, à la date de 24 juin 2005.
20. Hunya, Gábor « FDI – Led Economic Growth in Romania? » dans Bîrsan, Maria; Paas, Tiiu (eds.), *Competitiveness of National Economies and the Efficient Integration into the European Union*, Cluj-Napoca, EFES, 2003, pp. 167-184.
21. L'Office National du Registre du Commerce, « Classification of Companies by Foreign Direct Investment by the Investors'Country of Origin, Balance Account at 30 September 2004 », dans *Statistical Data Regarding Foreign Investment in Romania*, *http://www.aneir-cpce.ro/chapter5/fiif1.htm*, mai 2005.
22. Mazilu, Anda, *Trasnaționalele şi competitivitatea*, Ed. Economică, Bucureşti, 1999.
23. Meier, Olivier, *Management interculturel*, Paris, Dunod, 2004.
24. Mockler, Robert J., *Management strategic multinațional. Un proces integrativ pe bază de contexte*, Bucureşti, Ed. Economică, 2001.
25. Pop, Nicolae Al. ; Dumitru, Ionel, *Marketing internațional*, Bucureşti, Ed. Uranus, 2001.
26. Porter, Michael E., *Competitive Strategy*. *Techniques for Analyzing Industries and Competitors*, New York, The Free Press, 1980.
27. Romanian Agency for Foreign Investment, « Statistical Data Regarding Foreign Investment in Romania », *http://www.aneir-cpce.ro/chapter5/fiif1.htm*, mai 2005.
28. Romanian Agency for Foreign Investments, « The Legal and Institutional Framework Regarding Foreign Investment », *Romanian Business Digest*, 2004, *http:// www.tipograph-21.ro/RBD/Articles.*
29. Saunier, Fabien, « Investissements Directs Etrangers en Roumanie », Ambassade de France en Roumanie, Mission Economique, *http://www.missioneco.org/economie/,* 25 août 2004 ; 05 octobre 2004.
30. The Gallup Organization, Romania, « Barometrul Investitorilor Străini », mai 2005, *http://www.gallup.ro*.

31. UNCTAD WID Country Profile, « Romania », *http://www.unctad.org/Templates/ Page.asp?intItemID=3198&lang=1United nations Conference*.
32. United Nations Conference on Trade and Development, « World Investment Report. Transnational Corporations and the Internationalization of R&D », United Nations, New York and Geneva, 2005, *http:// www. unctad.org/en/docs/wir2005_en.pdf*.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

THE EFFECT OF THE EUROPEAN INTEGRATION ON THE BOOK INDUSTRY

Felicia Cornelia Macarie[*]

Abstract

L'industrie du livre de la Roumanie doit résoudre actuellement deux grand problèmes: l'assimilation du choc de l'intégration eprouvé par l'économie roumaine et la solution du problème crucial avec lequel toute l'industrie du livre se confronte: la réduction dramatique de ses clients. L'effet prévisible est la hausse des prix et par conséquent la diminuation de la demande des livres.

There will be a time when armies of half-illiterates will face an avalanche of information.

Alvin Toffler

Reading of books has become in the last years both in Romania and all over the world a preocupation for which people seem not to have the same amount of time as they used to have in the past and buying of books has become a simple form of trade.

The Romanian book industry which has overcome very fast the distance that separated it from the rest of Europe has nowadays the same problem as the European book industry, the dramatic drop of customers and consequently a dramatic drop in sales. Facing this situation all those involved in this industry have to work together even if some of their interests don't coincide.

[*] Dr. Felicia Cornelia Macarie is lecturer at the Babeş-Bolyai University of Cluj

The joining of Romania to the European Union finds the book industry from this country compared to other European countries as having:

- the lowest internal net product per inhabitant;
- the lowest business rate;
- the lowest percentage of the business rate from the internal net product;
- the lowest quantity of new titles per year;
- the lowest average price after Russia according to annexe no. 1.

This situation will worsen as the readers'interest goes to other sources of information like newspapers, the internet, radio, TV, radio. The main effect will be the decrease of the number of published copies and the raise of the price for one copy.

Meanwhile those who work in the book industry will take new marketing policies to keep and icrease the number of customers.

There will be major changes to the roles of the characters from the book industry:author-editor-publisher-book keeper-reader.

If in the past the publisher had an active role in the publication of a book being both editor and book keeper, now the greatest effort, the material, marketing, financial and spiritual effort comes to the editor who mediates the relation between the writer (author) and reader (buyer).

These two characters between whom we can find the book offered by the first and requested or not by the second are obliged by the market situation to get closer and closer, to get to know each other and to change from some abstract characters into real, active, visible persons. The editor is the one who mediates this relation to the material and spiritual advantage of all: author, reader, business men from the book industry.

The Romanian editors as well and the other editors from other markets grouped in more professional associations are aware of the

critical zones and of the opportunities which the book industry confronts.

The Romanian Editors'Association is the most powerful association through the number of members and its presence on the market. It releases an annual report regarding 'the book market from Romania'[1] based on an opinion poll on the biggest players from this market.

The 2002 report has information regarding the production and selling of books but it has also the quantity inquiry 'The Reading Habits of the Young between 11-18 years old' made by Mercury Research in 2003.

In the 2001 report there is the study 'Who are the Bookshops customers?' did by TGI Romania. From the study we can see that those who buy 1-12 books/year represent 55% from the urban population with the age between 18-40 years old, meaning 3.000.000 readers (13% of Romanian population).

The regular customers that buy books frequently (5-12 books/year) are only 20% from the urban population with the age between 18-40 years old, meaning approximately 1.200.000 persons (5% of Romanian population).

There is an important segment of population that can be activated in terms of reading, the scholar population (there are 2.400.000 students in the compulsory education system and 650.000 high school students)[2]. The study shows that 56% from the high school graduates and 12% from the university graduates never buy books. Over 60% of the students don't read any book except the textbooks.

Those who didn't buy any book in a year represent 45% of the urban population between 18-40 years old. Their profile is:

- 58% younger than 30 years so they're very young;
- 79% have graduated from high school long time ago;

---

[1] www. aer.ro/ro/statistici-2001

[2] Source: National Education Ministry

- 44% work as employees without a university degree;
- more than a third don't speak any foreign language;
- they have old, conservative views and are oriented towards security and confort;
- the main sources of information and relaxation are the TV and radio;
- they watch TV more than 7 hours a day;
- are less willing to read the newspapers.

The teenagers (15-18 years old) regard books as:

- 'if you stay to read a book some consider you stupid or a nerd';
- 'reading is not fashionable anymore';
- 'you'd better chat, play football, have fun rather than read'.

The main indicators from the book industry are shown in table no. 1 below.

Table 1: The Indicators from the Book Industry from Romania
no. , %, ROL, euros

Indicators	**2001**	**2002**	**Percentage variation %**
The Production of Titles from which:	6080	6393	+5%
New titles	4420 (73%)	4528 (71%)	+2, 5%
Re publishing	1660 (27%)	1865 (29%)	+12%
Romanian authors	4650 (77%)	4730 (74%)	+2%
Foreign authors	1430 (23%)	1663 (26%)	+16%
Production in number of copies	15.770 thousand	14.193 thousand	-10%

Number of copies sold	13.026 thousand (83%)	11.202 thousand (86%)	-14%
Average publishing rate	2.594	2.220	-14%
Business rate	974,3 billion (ROL) 37,6 million euros	1.218,9 billion (ROL) 39 million euros	+25% +3 %
Avearge price per copy	61.782 ROL 2,4 euros	85.883 ROL 2,7 euros	+39% +12%

ROL = Romanian currency.
Source: A. E. R., Statistic Inquiry 2002

The main publishing domains/fields depending on the title production and number of copies are shown on the second table.

Table 2: The Book Production on Different Domains/Fields
%

No	**Publishing Fields**	**Production of new titles**		**Production of copies/ No. of copies**	
		2001	**2002**	**2001**	**2002**
1.	Scientific and technic	22	23	7	4
2.	Literature	18	18	14	15
3.	Social sciences	14	15	10	9
4.	Textbooks	12	19	35	46
5.	Law and Economy	9	6	6	1
6.	Practical books	7	3	7	5
7.	Children and youth	6	7	9	12
8.	Religion	5	3	5	3
9.	Encyclopedias/dictionaries	4	3	6	3
10.	**Arts**	1	1	0	0
11.	Other	2	2	1	2
	TOTAL:	100,00	100,00	100,00	100

Source: A. E. R., Statistic Inquiry 2002

One can see major discrepancies in the scientific and technical fields where the number of titles is very high and the number of copies very reduced but also to textbooks where the number of titles is very reduced and the number of copies is very high. This situation explains why the price of scientific and technical books is a lot up the average price of books (in 2002 the average price of a book was 2,7 euros).

Regarding the business rate on activity domains/ fields, the situation is shown on table 3.

Table 3: The Business Rate on Activity Domains/Fields

%

No	Publishing Fields	Year	
		2001	**2002**
1.	Textbooks	33	35
2.	Literature	18	18
3.	Social sciences	11	16
4.	Scientific and technic	7	8
5.	Children and youths	7	7
6.	Practical books	5	6
7.	Encyclopedias and dictionaries	13	4
8.	Religion	2	2
9.	Law and Economy	2	2
10.	Arts	0,5	0,5
11.	Other	1,5	1,5
	TOTAL:	100,00	100,00

Source: A. E. R., Statistic Inquiry 2002

One can notice that the textbook production has a great contribution to the business rate. Comparing France for example, the textbook production represents 15% of the business rate (numbers) and the practical books 15% and in Romania we have 33-35% for textbook production and 5-6% for practical books.

The translations represented approximately 24% from the total of books published in 2001 and 26% in 2002.

The evolution of the language rate from which the translation is made in the total of acquisition of translation rights and of publishing domains/ fields are shown in the tables 4 and 5.

Table 4: Acquisitions and translation rights - language balance - %

No	The translated language	2001	2002	Variation
1	**English**	47	47	-
2	French	27	25	-2
3	German	9	13	+4
4	Italian	2	3	+1
5	Spanish	2	4	+2
6	Other	13	8	-5

Source: A. E. R., Statistic Inquiry 2002

Table 5: Acquisition and translation rights - domains balance - %

No	Domains	2000	2001	2002
1	**Literature**	46	50	49
2	Social sciences	29	20	15
3	Religion/esotericism	7	11	8
4	Practical books	6	8	11
5	Other	12	11	17

Source: A. E. R., Statistic Inquiry 2002

It can be noticed the great number of translation (almost half) from and in English.

All this editorial production is being realized economically when the reader takes the decision to buy that book. The main selling channels used by the Romanian book sellers and their evolution are shown in table 6.

Table 6: Selling Channels
%

No	Selling Channels	Year	
		2001	2002
1.	Book shops	38	57
2.	Mass selling/Warehouse selling	29	26,5
3.	Book sold by mail	21	12
4.	Own network	11	4
5.	Electronic-commerce	1	0,5
	TOTAL:	100	100

Source: A. E. R., Statistic Inquiry 2002

One can notice a major structural modification of the editors' orientation to distribution channels in 2002 compared to 2001. If in 2001 38% of the editorial production was sold through bookshops in 2002 it grew in editors' preferences at 57%, meaning more than half. The spreading channels replaced in 2002 by the bookshops were 'the book by mail' which is dropping from 21% to 12% and the publishing houses own network that is dropping from 11% to 4%. These major changes put the book industry from Romania into a different marketing that is also on the European market and it represents a moment of ending of the searchers for alternative solutions for improving the editorial business.

The actors from the book industry from Romania are ready for the adhesion impact. The future will confirm or not this statement. There's interesting to see what the European model that this industry will adopt. Our opinion is that that a viable model of functioning of the European book industry is represented by the German book market where the German Trade Alliance (Der Börserverein des deutschen Buchhandels) that has as marks the books and reading. The Alliance had until 2004 a number of 6.751 members from who approximately 1.969 publishing house members and 4.661 bookshop members (7.500 including the subsidiaries and other places for

selling), 79 mass sellers and 42 representatives of the publishing houses. From the dates from the Alliance[3, 4] the market situation in Germany looks like this (table 7, table 8).

Table 7: Book Production from Germany
Euros, buc.

No	Indicators	Year	
		2003	2004
1.	Business rate	9,07 billion	9,1 billion
2.	Number of copies	770 million	960 million
3.	Number of new titles	80 thousand	80 thousand

Table 8: Ways of Distribution of the Books in Germany
Euros, %

No	Indicators	Year			
		2003		2004	
		Euros (billion)	%	Euros (billion)	%
1.	Business rate from which:	9,07	100	9,1	100
2.	Through bookshops	5,13	56,5	5,1	55,8
3.	Direct to readers	1,57	17,3	1,6	17,7
4.	Through mail	0,85	9,4	0,9	9,9
5.	Supermarkets	0,41	4,5	0,4	4,4
6.	Clubs (bookshop associations)	0,31	3,4	0,3	3,3
7.	Other places	0,80	8,9	0,8	8,9

The structure of the business rate according to the type of books sold is shown in table 9:

[3] www. boerserverein.de/de/64626
[4] Christina Droll-Burek, *Piața germană de carte*, in AGORA magazine, no. 1(1), 2005, page 29

Table 9: The Structure of the Business Rate in the Book Trade in Germany (%)

No	The Type Group	On Average
1.	Paperback (chief books-brooch)	14
2.	Non-fiction	12
3.	Hobby-spare time-traveling	10
4.	Literature	11
5.	Specialized books	10
6.	School books	8
7.	Children books and Youths	10
8.	Specialized magazines-titles in more volumes	7
9.	Specialized books-natural sciences	4
10.	Secondhand bookshop/ Secondhand bookshop with new titles	3
11.	Visual and audio media	2
12.	Others	9
	TOTAL:	100

Source: Buch-und Buchhandel in Zahlen, 2002 Edition.

In Germany the tax is 7% for books and the taxes demanded by the mail service are less than for the rest of the delivers. The selling price of the book is fixed by the publishing house and is the same all over Germany, for selling the bookshops receiving 25-50% depending on the number of titles and business rate.

Germany owns since 1996 a computerized system of delivering of books with national coverage made by the biggest firm of selling books in a wide range, Koch, Neff&Volckmar (www.buchkatalog.de). The system database is a huge editorial electronic catalog that contains 2,2 million titles from which 450.000 are German books (300.000 permanent and ready to be delivered), 650.000 French titles, 240.000 English titles, 140.000 Italian titles, 220.000 Spanish titles and 540.000 American titles.

The existence of this computerized national system allows the access of any reader to information related to books and the ordering of any book by any bookshop or distributor from any bookshop or warehouse and its rapid delivery at the same price anywhere in Germany. In the present this system represents the largest database of this kind from Europe.

The Alliance is the one that organized the Book Fair from Frankfurt, annual event that contributes to the dynamism of the book market from Germany (www.frankfurt-book-fair.com).

Except books the German Alliance has as a main goal reading. For this purpose it organizes annually starting with 1959 'The Reading Contest'-the most important project of stimulating reading from Germany-at which take part 700.000 children. Starting with 2005 it organizes also the contest 'Also the Ear Reads' at which the contestants from all ages read a book being stimulated to transform it in a radio play or to give to it journalistic characteristics.

From its foundation the Association of German Book Trade has become a partner of discussion for the government and parliament at the level of district, country and European level, militating for the interest of the publishing houses and book shops. It initiated and promoted two important laws for the book industry: the law of the unitary price and the law of the copyright and copyright for publishing house.

The German model of functioning of the book industry has proved its viability. Will we know to save time and not to repeat the mistakes of the others at least when the end is the spiritual health of a nation? Or in our case Alvin Toffler was right 30 years ago when he saw the future populated by 'armies of semi-illiterates confronted with an avalanche of information'?

References

1. Tuță F. C., *Management financiar în industria cărții*, POLIROM Publishing house, Iaşi, 2000;
2. Droll-Burek C., Piața germană de carte, in *AGORA magazine*, published by SEDCOM Libris Iaşi, no. 1 (1), pages 28-29;
3. The Romanian Editors Association, [www.aer.ro]
4. German Trade Alliance, [www.borersenverein.de]
5. Koch, Neff&Volckmar [www.buchkatalog.de]
6. Book Fair from Frankfurt [www.frankfurt-book-fair.com]

Annex 1

The Book Production and the Price of Books in Europe
Euros

Country	IBP (bld)	IBP/ capita	Book market		Titles /year	Average price/book		Fix price *
			Vol.	% IBP		Paper	in boards	
Germany	2.500	25.800	9 bld	0,36	100.000	12	26	Yes
France	1.500	25.000	2,5 bld	0,17	50.000	5	15	Yes
U.K.	1.200	15.000	2 bld	0,17	125.000	-	10,35	No
Spain	600	17.000	2,5 bld	0,41	60.000	6	12	Yes
Romania	50	2.500	40 mil	0,08	6.500	2,7	-	Yes
Czech R.	100	14.000	140 mil	0,14	16.000	-	6,25	No
Hungary	52	5.000	223 mil	0,43	10.000	8	12	Yes
Poland	185	5.000	473 mil	0,26	23.000	-	6,62	No
Bulgaria	13	1.700	-	-	8.000	4	7	Yes
Russia	450	3.000	1.300 mil	0,29	90.000	1,8	4,3	No

Source: www.frankfurt-book-fair.com

* In the rest of the European coutries, except Finland and Sweden the price is fix. The EU recommendation is for fix price.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

DEVELOPMENT OF SUBSIDIARITY PRINCIPLE FROM MAASTRICHT VIA AMSTERDAM TO ROME

László Kecskés*
Zoltán Nemessányi**

Abstract
This paper is dealing with the general framework of the development of the subsidiarity principle within the various provisions of the community law, as it is included in the Treaties.

The Appearance of General Principles in European Law

The General Principles of Community Law
As in other legal systems, it has been necessary for the European Court of Justice to develop legal principles of general application to assist in applying the law and to temper its rigidities[1]. In every legal system the written sources of law do not provide the answer to every problem, which appears before the courts, therefore the ECJ has had to develop general principles of law to provide a foundation for judgement[2]. The authority to do so derives from the direction in Article 164 of the original text of the EEC Treaty that the Court is to "ensure that … the law is observed". In theorie the principles developed by the Court are "general principles common to the law of the member states", the shared tradition of the member states being

---

* László Kecskés, is a Professor Doctor, D.Sc., Head of Civil Law Department, University of Pécs, Hungary
** Zoltán Nemessányi is an Assistant Doctor of Civil Law Department, University of Pécs, Hungary
[1] Edward, David A.O. – Lane, Robert C.: European Community Law. An introduction. Edinburgh, 1991. p.39.
[2] Owen, David: Essential European Community Law. London, 2000. p. 14.

seen as a source of law prior to the written law of the Treaty. In practice, the Court has not generally felt bound with to limit itself to principles found in the law of all the member states and has adopted those which seemed best adopted to the Community system. Since much of Community law is administrative law, some of the most important principles have been taken from the highly developed administrative law of France and Germany. Latterly, the Court has adopted some of the principles of natural justice as developed in the United Kingdom[3]. Whatever the origin of the principle, it will be applied by the ECJ as a principle of EC law, not national law[4].

The most important principles referred to by the Court can be grouped into four categories: 1. fundamental human rights, 2. legal certainty, 3. proportionality, 4. equality of treatment or non-discrimination[5].

Although the Court of Justice has referred to all these principles in decided cases, it has in some instances held, that the principle in question did not apply to the facts of the case before it. Also, in relation to the confidentiality of communications between lawyer and client, the Court limited itself (exceptionally) to adoption of the principle only so far as it had been shown to be common to all the member states[6].

The principle of fundamental human rights

The Court of Justice has held that "respect for fundamental human rights forms an integral part of the general principles of law

---

[3] Edward, David A.O. – Lane, Robert C.: European Community Law. An introduction. Edinburgh, 1991. p.39.

[4] Owen, David: Essential European Community Law. London, 2000. p. 14.

[5] Edward, David A.O. – Lane, Robert C.: European Community Law. An introduction. Edinburgh, 1991. p.39.

[6] Edward, David A.O. – Lane, Robert C.: European Community Law. An introduction. Edinburgh, 1991. p.42.

protected by the Court of Justice"[7]. Such rights find their sources in "the constitutional traditions common to the Member States" and "international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories" – the most important of the latter being of course the European Convention on Human Rights. Respect for fundamental rights constitutes a constraint both upon the legislative and executive action of the Community institutions and upon that of the authorities of the Member States when they are applying, or are obliged to apply Community rights and obligations[8].

Principles related to fundamental rights, and aligned with British concepts of natural justice, which are particularly applicable where the Community institutions fulfil administrative rather then legislative functions, are the following:

Audi alteram partem: a person is entitled to be heared in his own defence before a penalty is imposed or a measure taken which will gravely prejudice his interests. It is a necessary precondition, that he should be informed of the case against him before being required to state his defence[9].

Non bis in idem: no-one should be tried twice for the same offence; and no-one should be subjected to two penalties for the same offence[10].

The right to legal assistance: a person is entitled to the help of a lawyer, and to be represented by lawyer, when his legal rights are in issue. This principle leads in turn to two further principles: a. that the

---

[7] Case 11/70 Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel. [1970] ECR 1125 at 1134 [1972] CMLR 255 at 283, ECJ

[8] Edward, David A.O. – Lane, Robert C.: European Community Law. An introduction. Edinburgh, 1991. p.40.

[9] See eg Case 17/74 Transocean Marine Paint Association v EC Commission [1974] ECR 1063, [1974] 2 CMLR 459, ECJ. Cited by: Edward – Lane: opus cited p.41.

[10] See eg Case 14/68 Walt Wilhelm v Bundeskartellamt [1969] ECR 1, [1969] CMLR 100, ECJ

lawyer is entitled to see all the relevant documents; and b. that communications between lawyer and client are confidental.

Protection from self-incrimination: whilst a person may be required to supply information to a Community authority, even if the information supplied would incriminate him, he can not be compelled to answer leading questions the answers to which would constitute an admission of unlawful activity, that being for the Community authority to establish[11].

And other fundamental human rights can also be mentioned like property rights (athough these are not absolute and unqualified), religious rights, and right to privacy (although it did not extend to seizing goods for the purposes of EC competition law)[12].

The principle of legal certainty

The application of the law to a specific situation must be predictable. From this general principle of legal certainty spring other principles:

Respect for aquired rights: a legal right, once aquired, should not be withdrawn. Read within the more general principle of legal certainty, this leads in turn to the principle that a case must be judged in the light of the law as it stood at the time of the events in question, not as it may have been changed or developed subsequently.

Non-retroactivity: a law cannot be applied to a person who could not have known of its existence. In particular, criminal offences cannot be declared retrospectively.

Legitimate expectation: a person is entitled to act (and conduct his business) in the reasonable expectation, that the law as it exists will continue to apply.

Understandable language: a decision must be communicated to a person affected by it in a language, which he understands.

---

[11] Edward, David A.O. – Lane, Robert C.: European Community Law. An introduction. Edinburgh, 1991. p.40.

[12] Owen, David: Essential European Community Law. London, 2000. p. 14.

Prescription: an act can not be declared unlawful, a penalty exacted or performance of an obligation required after an excessive lapse of time.

The principle of proportionality

This is a principle, borrowed from German law[13]. The principle of proportionality requires that the means employed must be proportionate to the end to be achieved. So, derogations from a general rule may only be such as are necessary to achieve the purpose of the derogation; penalties must be proportionate to the gravity of the offence; and a heavy burden should not be imposed upon some people in order to achieve something that is only of small importance to others[14].

The principle of equality of treatment or non-discrimination

Equal situations must be treated equally or, otherwise expressed, similar situations should not be treated differently unless there is an objective justification for treating them differently. The corollary of this principle is that unequal situations can, and sometimes should be treated differently. This principle has two specific Treaty applications: (1) that men and women should be treated equally; and (2) that a member state may not deny to its own nationals rights which the EC Treaty requires it to accord to the nationals of other member states[15].

The notion of subsidiarity

Federalism apart, there is no idea in European integration studies that has sparked and sustained debate on such a scale as subsidiarity.

[13] Owen, David: Essential European Community Law. London, 2000. p. 16.

[14] Edward, David A.O. – Lane, Robert C.: European Community Law. An introduction. Edinburgh, 1991. p.41-42.

[15] Edward, David A.O. – Lane, Robert C.: European Community Law. An introduction. Edinburgh, 1991. p.41-41.

This is not coincidental, as the two concepts are closely related. Subsidiarity guides federalism and is fostered by it[16].

The subsidiarity principle as applied in the institutional context is based on a simple concept: the powers that a State or a federation of States wields in the common interest are only those which individuals, families, companies and local or regional authorities cannot exercise in isolation. This commonsense principle therefore dictates that decisions should be taken at the level closest to the ordinary citizen and that action taken by the upper echelons of the body politic should be limited.

The first application in law of this essentially political principle is to be found in the relationship between some of the Member States and their regions, where it takes various forms depending on their constitutional traditions.

In the Community context, subsidiarity means that the functions handed over to the Community are those which the Member States, at the various levels of decision-making, can no longer discharge satisfactorily. Any transfer of powers must have due regard for national identity and the powers of the regions. The Member States, for their part, are required to facilitate the attainment of the Community's objectives by Article 5 of the EEC Treaty.

The subsidiarity principle is enshrined in the preamble and in Articles B and 3b of the Treaty on European Union. It was present in embryonic form in the ECSC Treaty (Article 5), implicit in the Treaty of Rome, and spelled out in the Single European Act in relation to the environment (Article 130r).

Subsidiarity is a dynamic concept in the Community system. Far from putting community action in a straitjacket, it allows it to be expanded where circumstances so require and, conversely, to be restricted or abandoned where it is no longer justified.

[16] Duff, A.: Subsidiarity. In: Encyclopedia of the European Union. Edited by: Dinan, D. London, 2000. p. 438.

For more than forty years the subsidiarity principle has satisfied two requirements: the need for Community action and the need to ensure that the means employed are commensurate with the objectives pursued, in other words, proportionality.

All the major initiatives taken by the Commission have been based on a justification of the need for action. The common policies provided for in the Treaty of Rome, the creation of a frontier-free area and the flanking policies provided for in the Single Act - all these initiatives have been fully justified by the imperatives of European integration. Everyone accepts that these tasks could only be effectively undertaken at European level. The results speak for themselves.

What is surprising is that certain other obligations to act, imposed by the authors of the Treaty, have still not been met in full. The list includes transport policy, certain aspects of commercial policy, and, indeed, some key provisions of the Euratom Treaty.

The intensity of Community action is sometimes criticized, the finger being pointed in particular at excessively detailed rules in highly sensitive areas (environment, health), regarded, rightly or wrongly, as being essential to the creation of a single market.

The fact that proposals are often requested by the Council or by Parliament, that wide-ranging consultations are held with all concerned (green papers, meetings of experts, etc.), that the initial proposals are expanded or altered beyond recognition by the Council or Parliament is of little consequence. The public perception is that the Commission is mainly to blame for any rules or regulations which seem to conflict with the subsidiarity principle. Its having to bear the brunt of such criticism is especially unfair when it is doing no more than fulfil the two prime tasks assigned to it by the Treaty: exercising its sole right of initiative and acting as the custodian of Community law.

Be that as it may, the enshrinement of subsidiarity in the Treaty and the importance attached to it by the Member states provide an opportunity for all the institutions, and above all the

Commission with its right of initiative, to confine Community action to the essentials, to do less to achieve more.

It also provides an opportunity to stress that subsidiarity cannot be used to bring the Commission to heel by challenging its right of initiative and in this way altering the balance established by the Treaties. There is an interinstitutional dimension to subsidiarity which also has a bearing on the democratic deficit[17].

The Treaty on European Union (The Treaty of Maastricht) regulates the principle of subsidiarity as follows: (Article 3b) The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. 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 in so far 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. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty[18].

In the run up to Maastricht, Valéry Giscard d'Estaing had produced a report for the European Parliament in which he attempted to spel1 out the distinction between exclusive and shared competence. He succeeded only in demonstrating the complexity of the European integration process, the rapidly expanding scope of the acquis communautaire and the essential ambiguity of subsidiarity. In the event, the Treaty chose to follow the Commission 's more pragmatic approach[19].

Article 3b contains, as well as the definition of subsidiarity, a reaffirmation of the traditional principle of assigned competence and

[17] The principle of subsidiarity. Communication of the Commission to the Council and the European Parliament. Brussels, 27 October 1992. pp. 1-2.

[18] Corbett, R.: The Treaty of Maastricht. From conception to ratification: a comprehensive reference guide. London, 1993. p. 388.

[19] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 102.

a fresh definition of proportionality. The implied tendency to decentralisation was reinforced by Article A of the preamble of the Treaty, which said that "decisions are taken as closely as possible to the citizen". Article B appeared to seek to spread the application of the "principle of subsidiarity as defined in Article 3b" to the achievement of all the objectives of the Union. In addition, Article K.3.2(b) provided that the Council may take joint action in the area of justice and interior affairs "in so far as the objectives of the Union can be attained better by joint action than by Member States acting individually on account of the scale or effects of the action envisaged".

What is curious is that the second indent of Article 3b appears to apply subsidiarity only to areas of concurrent competence, whereas the principle of proportionality or intensity of action (the third indent) applies also to exclusive competence. The inherent ambiguity of subsidiarity is compounded because, despite the now commonplace nature of the political distinction between the two, there is no explicit distinction drawn anywhere in the Treaty of Rome in legal terms between exclusive and non-exclusive competence.

Subsidiarity is a useful political expedient, but it makes sense in practical terms only when considered together with competency and proportionality. Article 3b is not about the allocation of competences but about how they should be exercised; and it does not affect the balance between the EU institutions but only between EU and state authorities. And despite much wishful thinking to the contrary, Article 3b refers only to the Union and member state governments, and cannot be applied to regional and local government without further Treaty amendment to that effect.

After the Maastricht Treaty had been signed, and on the basis of a draft from the Commission, the European Council at Edinburgh in December 1992, set out guidelines about how Article 3b should be applied, and also related it to the newly-fashionable concept of "transparency". Subsidiarity was then articulated in all the Union 's

interinstitutional agreements and its application was seen certainly to affect the behaviour of the Commission, where self-restraint in drafting new legislation prevails, and in the Council, where all drafts are put to the subsidiarity test. Some draft measures have even been withdrawn, although there has been no large-scale repatriation of EC law, as many nationalists had hoped[20].

Origins of subsidiarity

The origins of subsidiarity lie deep within Catholic social doctrine and federal political thought. The Roman Catholic Church developed a social doctrine of subsidiarity, whereby society should give help (*subsidium*) to its weaker members but take care to preserve their self-respect and autonomy (Pope Leo XIII's 1891 Rerum Novarum). Writing from the heart of fascist Italy in 1931. Pope Pius XI warned: "just as it is wrong to withdraw from the individual and commit to a group what private enterprise and industry can accomplish, so too it is an injustice, a grave evil and a disturbance of the right order, for a larger and higher association to arrogate to itself functions which can be performed efficiently by smaller and lower societies". Subsidiarity carries the connotation of solidarity among different classes of society – a concept that influenced, among others, the left-wing Catholic Jacques Delors, who became Commission president in 1985[21].

Although the term subsidiarity itself was rarely used in English or French, the rich discourse among federalist thinkers such as Mill, Proudhon, and Marc about how the state should exercise its functions at the lower level was informed by the principle of subsidiarity. It may be agreed, that the British contributed mainly to the idea of liberal democracy and the French mainly to nationhood, but it was the Germans who focused on the role of the citizen,

[20] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 103.

[21] Duff, A.: Subsidiarity. In: Encyclopedia of the European Union. Edited by: Dinan, D. London, 2000. p. 438.

individually and collectively, in the building of the state[22] after World War II. *Subsidiaritätsprinzip* suggests that there are mutual and comprehensive obligations between the state and the individual on behalf of the whole society, and these can be written down. In modern Germany "neo-liberalism, Roman Catholic social doctrine and the Protestant social ethic have each drawn on the concept of subsidiarity". Although the German Constitution does not use the term, but the relationship between the states (Länder) and the federal government (Bund) cannot be understood without it[23].

The concept first surfaced explicitly in the European Commission's submission to the Tindemans enquiry on the future of the European Community in 1975[24]. It proposed that a new constitution should be drawn up to found 'European Union', and continued:

"... European Union is not to give birth to a centralising super-state. Consequently, and in accordance with the "principle de subsidiarité", the Union will be given responsibility only for those matters which the Member States are no longer capable of dealing with efficiently ... Hence, the competence of the Union will be limited to what is assigned to it, meaning that its fields of competence will be specified in the Act of Constitution, other matters being left to the Member States... Of course, in deciding on the Union's competence, application of the principe de subsidiarité is restricted by the fact that the Union must be given extensive enough competency for its cohesion to be ensured".

This was the first officail usage of subsidiarity by the Commission, which went on to explain that, as in German Basic Law, there were three types of competence: exclusive, concurrent and

---

[22] Duff, A.: Subsidiarity. In: Encyclopedia of the European Union. Edited by: Dinan, D. London, 2000. p. 438.
[23] Duff, A.: Subsidiarity. In: Encyclopedia of the European Union. Edited by: Dinan, D. London, 2000. p. 438.
[24] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 102.

potential. With concurrent powers, the Union "would assert its authority only when it felt the need" - by acting only with regard to certain aspects, or by passing outline legislation with actions specified for the Union and for member state governments, leaving the latter free to act in all unspecified matters. In a telling coda, the Commission asked how consistency was to be assured between Union and member state level action[25].

"The answer is that Union law takes precedence over national law. Clearly, coordination between the two types of action cannot be provided simply by legal texts or by establishing procedures: it must also rest at any given time on the balance of the politicaI forces involved."[26]

The Tindemans Report suggested that the building of European Union required the adoption of four criteria to determine change: authority, efficiency, legitimacy and coherence. It did not repeat the term subsidiarity; nor did it go as far as the Commission in seeking the exercise of massive new powers at the Union level. But Tindemans still expected that the Union would seize the initiative when it found member states performing ineffectively and inefficiently."

Tindemans was followed by the MacDougal Report on fiscal federalism, which identified three criteria for assessing the involvement of the EC: economies of scale, transnational effect and political, economic and social cohesion (although the term "cohesion" was not used until the Single European Act). MacDougal1 favoured transfers of resources between member states and regions, orchestrated where necessary by the Community, rather than the development of a large scale public finance capability at the European level.

---

[25] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 101.

[26] EC Commission, European Union: Report by Mr Leo Tindemans to the European Council, Bulletin of the European Communities, Supplement 1/1976.

The high tide of the federal project, so far, was the European Parliament's Draft Treaty on European Union in 1984, whose chief inspirer was the veteran Italian federalist Altiero Spinelli. It was here that "subsidiarity" was used for the first time in English. The Preamble said: "Intending to entrust common institutions, in accordance with the principle of subsidiarity, only with those powers required to complete successfully the tasks they may carry out more satisfactorily than the States acting independently".

This means, effectively, that the powers of the Union are subsidiary to those of the member states. Spinelli, indeed, who had been imprisoned by Mussolini, saw subsidiarity as the way to check over-weening central authority. Articles II and 12 of the Draft Treaty sought to define each of the wide competences of the Union as cither exclusive, concurrent or potential. Where the Treaty conferred concurrent competence, member states could continue to act until the Union did so; the Union could act only where it could do so "more effectively", and particularly where the action had cross-border effects; and the Union's first action in a new field would take the form of an organic or framework law under whose auspices member states would then act to carry out Union law. (The term "virtual competence" is perhaps a more accurate expression in English than "concurrent".)[27]

The Single European Act (1986) was a lesser creature then the Parliament had proposed but represented, nevertheless, a qualitative leap forward in the federalisation process. It assigned major new competences to the Community, set the objective of Economic and Monetary Union, and in many cases prescribed decision-taking in the Council by qualified majority vote. Although the term was not used, the growing influence of the principle of subsidiarity was plain to see - notably, in Article 130r.4 on environment policy, which stated that the Community "shall take action ... to the extent to which the

[27] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 101.

objectives ... can be attained better at Community level than at the level of the individual Member States”.

Concerned about the implications of the single market programme and about the growing diversity of the enlarging Community, President Delors had set up an enquiry under the distinguished federalist Tommaso Padoa-Schioppa. The report applied rigorously the principle of subsidiarity and recommended systemic reforms in the direction of greater decentralisation of Community policies, more selectivity in the choice of Community responsibilities and stronger powers for the Community institutions in some key areas such as monetary policy, competition and budgetary control. 6 Relentless harmonisation should be checked, even in social policy, except where there was clear transnational spillover; EC action should occur only on the basis of a cost/benefit analysis; the Community should frame member states' actions but not replace them[28].

Simplifying the Existing Legislative Framework

Legislative review under the principle of subsidiarity has been described by Maher as „revision without zeal”[29]. That is to say, the consequence of the review process was not the emergence of a radical deregulation agenda, but a somewhat more technocratic review exercise. This technocratization of subsidiarity – a principle which at first seemed to raise difficult normative issues concerning state-society relations in a system of multi-level governance – is consistent with the preference for technical fine-tuning within limited conceptual parameters rather than a desire to address the conflicting visions of the future of EU governance[30].

---

[28] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 101-102.

[29] Maher, I.: Legislative Review by the EC Commission: Revision Without Zeal. In: Shaw, J. – More, G. (eds.): New Legal Dynamics of European Union. Clarendon Press, 1995.

[30] Craig, P.–de Burca, G.: The Evaluation of EU Law. New York, 1999. p. 757.

As regards existing legislation, review has generally consisted of refinements to the framework. For example, the Edinburgh Council noted its desire for an increased consolidation of legislation. Consolidation work was already under way as a response to the recommendations of the Sutherland Report[31]. In this way, both the reaction to the Sutherland Report and the application of the subsidiarity principl produced a legislative reform movement focusing on the consolidation of legislation[32].

However, the response to the subsidiarity principle did more than create a concern with transparency and consolidation. When Commission President Santer assumed office he self-consciously talked of the need for the Commission to „do less, but do it better". In 1995 the first of the annual „Better Lawmaking" reports appeared[33]. But what do we mean by „better" lawmaking? What is the normative framework which guides a process of improving the quality of legislation?

Refracted through the lens of subsidiarity, the concern with the quality of regulation is essentially a debate about the level at which regulation should take place (national, EU, or international), rather than whether regulation ought to be undertaken at all. Of itself that is an important debate, begging questions both of substance (what function ought the EU level to play?) and of process (who participates in decision-making at which level?). Yet, the clear message from the Commission is that the issue of producing quality legislation is a more technical one concerned with enhancing the governance capacity of EU institutions through the harnessing of different regulatory structures and instruments at different levels[34].

For example, in its 1993 report on adapting EU legislation to subsidiarity, the Commission referred to the need to remove excessive detail from EU legislation, if national or international

---

[31] The Internal Market After 1992: Meeting the Challenge. EC Commission, 1992.

[32] Craig, P.–de Burca, G.: The Evaluation of EU Law. New York, 1999. p. 757.

[33] CSE(95)580 final; CSE(96)7 final; COM(97)626 final

[34] Craig, P.–de Burca, G.: The Evaluation of EU Law. New York, 1999. pp. 757-758.

instruments or controls could achieve the same goal. It is clear, then, that the concern is with the appropriate use of EU legislation as an instrument of policy as compared with other sources of regulation arising at different levels, rather than with the impact of legislation upon the regulated or potential beneficiaries (e.g. workers, citizens, or consumers). Thus, instruments such as New Approach directives, the application of the principle of mutual recognition and the setting of quality targets in environmental legislation do not of themselves deregulate, but generally shift the location of regulation to different bodies (Comité Européen de Normalisation (CEN), Comité Européen de Normalisation Electrotechnique (CENELEC), and European Telecommunications Standards Institute (ETSI) in the case of New Approach directives) or repatriate regulatory activities to the Member States. In this way, regulatory reform under subsidiarity is simply concerned with how the EU level of governance operates in terms of its deployment of instruments. The goals of the EU system are not called into question nor those of the international and national systems[35].

The suggestion is not that those with rights or obligations under EU rules would not profit from simplification under the subsidiarity principle, but rather that the implications of simplification have been refracted through a lens preoccupied by considerations of the vertical and horizontal division of power. And, viewed from this perspective, the Commission had ready-made defence against attacks on its regulatory competence. A tipical example of this defence can be found in the 1993 subsidiarity report: „It should be borne in mind that the Commission's work on the revision of Community legislation represents a second stage in an operation to simplify legislation. The first stage resulted from Community harmonisation itself"[36].

---

[35] Craig, P.–de Burca, G.: The Evaluation of EU Law. New York, 1999. p. 758.

[36] European Commission. Growth, Competitivness and Employment: The Challenges and Ways Forward into the 21st Century. COM(93)700 final.

The Commission, when faced with charges of being too willing to initiate legislation, was therefore, always able to point to harmonization as a mechanism for removing multiple sources of regulation. In this way, the whole process which gave rise to the regulatory indigestion (in particular, the drive to create a Single Market) could be repackaged as itself a simplification process[37].

Distribution of powers: The distinction between Community powers, shared powers and national powers

Community powers and national powers

It must be made quite clear from the outset that the subsidiarity principle regulates the exercise of powers rather than the conferment of powers. The conferment of powers is a matter for the writers of our "Constitution", that is to say, of the Treaty. A consequence of this is that the powers conferred on the community, in contrast to those reserved to the Member States, cannot be assumed.

A first consequence of the subsidiarity principle - too of ten ignored - is implicit in the first paragraph of Article 3b, namely that national powers are the rule and the Cornrnunity's the exception. This explains why it would be pointless, at "constitutional" level, to list the powers reserved to the Member States.

However, the absence of a list of national powers creates a political problem to the extent that local authorities, and indeed the general public, in certain Member States conclude that there are no precise limits to intervention by the Community, which stands accused of being able to meddle where it pleases.

If subsidiarity is to be translated into concrete terms for the benefit of the general public, the first question to be answered is whether it might not be better to indicate the main areas reserved to

[37] Craig, P.–de Burca, G.: The Evaluation of EU Law. New York, 1999. p. 758.

the Member States rather than simply affirm that national powers are the rule.

A second difficulty posed by the Treaty on European Union is that, while the authors did enumerate and at times carefully circumscribe the Community's powers they also drew a distinction in Article 3b between exclusive Community competence and competence shared with the Member States without defining or specifying the content of each of these "blocks of competence." This means that there is no clear line of demarcation between exclusive and shared powers. The fact is, however, that the distinction between the two is extremely important because the need for action is assessed quite differently depending on the type of powers

The two dimensions of the subsidiarity principle

Under the terms of Article 3b of the Maastricht Treaty, the notion of subsidiarity covers two distinct legal concepts which are often confused: the need for action (second paragraph) and the intensity (proportionality) of the action taken (third paragraph).

As far as need is concerned, subsidiarity governs the very principle of Community intervention and it is for the Community to demonstrate the justification for Community action in preference to action taken, or action which could be taken, by the Member States to achieve the objectives of the Treaty.

However, the second paragraph of Article 3b does not require the Community to demonstrate the need for action except "in areas which do not fall within its exclusive competence", that is to say, in areas of shared competence.

In other words, the authors of the Treaty assumed that, in certain areas, the Community was the only appropriate level for taking the action needed to achieve the objectives of the Treaty.

Since the Treaty does not define the not ion of exclusive competence or list the areas covered, it is for the institutions, and in the first place the Commission, to agree on a common approach to avoid endless demarcation disputes between exclusive competence

and shared competence with the attendant dangers of watering down the "need" element of subsidiarity. Furthermore, the subsidiarity principle - as a test of whether a given shared power qualifies for Community action - does not apply in the same way to all the objectives set by the Treaty. The constraints under which the institutions operate, and the instruments available to them, differ according to the responsibilities assigned to the Community (as between cohesion policy and civil protection, for example).

As far as intensity is concerned, subsidiarity provides a guarantee that the extent of the action taken will not be out of proportion to the objective pursued, irrespective of whether the powers exercised are exclusive or shared, as stipulated in the third paragraph of Article 3b.

We need to give substance to a well-known problem, the problem of proportionality, and translate political will into practice, if action. is needed to achieve the objectives of the Treaty, it must not be disproportionate, this implies that recourse to the most binding instruments should be used as a last resort and that, wherever possible, priority should be given to support measures rather than regulations to mutual recognition rather than harmonization, to framework directives rather than detailed rules and regulations, etc[38].

The 1996 IGC

The inclusion of subsidiarity in the Treaty on European Union was hailed (by the British) as a triumph of Anglo-Saxon diplomacy. The Conservative government brought forward proposals to entrench subsidiarity more firmly within the Treaty - ironically, a gesture that met with warm approval by the federalists to whom John Major's party was so bitterly opposed. But the UK Memorandum to the IGC of August 1996 was biased towards the exercise of powers at the level of the member state and against that of the Union. Its draft

[38] The principle of subsidiarity. Communication of the Commission to the Council and the European Parliament. Brussels, 27 October 1992. pp. 3-5.

protocol said: "In the exercise of its jurisdiction, the Court of Justice shall always have regard to the principle of subsidiarity. In particular, it shall be presumed that, in the absence of a clear contrary intention, the Community legislator intends to conserve the freedom of the Member States as far as possible. Accordingly, when faced with more than one possible interpretation of provisions of Community law, the Court shall, unless there is a clear contrary intention, prefer the interpretation which least constrains the freedom of the Member States"[39].

How to interpret, especially in a Europe of differentiated integration, which approach would impact least on each member state government, with their diverse national jurisdictions and legislative forms, was not explained. The British concept of member state freedom from the regime of the European Union failed to attract supporters, even from those, such as the Austrians, who wanted a simplification of the subsidiarity rules and a greater role for national parliaments. The reaction of the Court of Justice itself is unrecorded.

The Group of Reflection had simply - and rather unhelpfully - defined subsidiarity as "who does what?" - a question that immediately provoked strongly differing answers. Westendorp and his colleagues, fearing that the IGC would fail to resolve such elementary differences, took refuge in ambiguity: "It is felt that the principle of subsidiarity should serve as a guide to the proper exercise of the powers shared between the Community and the member states and avoid their misuse either to excess or the contrary".

Most member states retained a similarly ambivalent attitude to subsidiarity. Italy, for example, in its submission to the IGC, argued that, although "adequate importance should be given to the principles of subsidiarity, proximity and proportionality, which

[39] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 104.

respond to the double need of respecting national and local decision-making competencies and avoiding the dangers of an excess of regulations at the European level," an "excessive importance" attached to subsidiarity might weaken the Commission's right of initiative, break up the single market and threaten the integrity of EC law[40].

France launched the idea of a "high parliamentary council" made up of national deputies which 'would be consulted on the subsidiarity aspect and on any third pillar issue'. 10 But the French government sensibly redirected itself as soon as no support for the proposal was realised (other than from certain 'Euro-sceptics' in Britain).

The German and Scandinavian governments, for their part, chose to invoke subsidiarity in support of more "nearness" or closeness of the EU institutions and procedures to the citizen. They were anxious that a stricter interpretation of subsidiarity would weaken EU competence in the social and environmental fields - an approach shared by the European Parliament, although MEPs also called subsidiarity in aid of their plea for more financial autonomy for the Union and the reform of the system of Community "own resources"[41].

The Dutch government trod a middle way between the British and continental approach. It took the view that the Union should put its own house in order through deregulation and subsidiarity before enlargement. It complained that in the field of justice and home affairs subsidiarity was not being applied - in other words, that more should be done at the EU level. At the same time the Dutch criticised the Commission for failing to explain why regulations at European level were required, and the other institutions for failing to exercise adequate scrutiny. The Dutch proposed that a member state may be

---

[40] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 104.

[41] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 105.

ab1e to request a first reading “admissibility” debate in Council, where the Commission's justification for the draft legislation and public responses from a fixed consultative period are aired - in public - before the measure is sent to the Council working groups. In case the British were too comforted by this proposal, the Dutch insisted that this procedure should not be used as a covert means of undermining the powers of either the Commission or the Court of Justice, which would continue to be eligible to hear appeals on the grounds of alleged breaches of subsidiarity in the normal way.

Before the British general election, the IGC did not progress very far. With regard to subsidiarity. there was consensus on leaving Article 3b intact. Only Austria and the Netherlands approved of the idea of a list of exclusive competences. Most opposed the British idea of attempting to write into the Treaty an article enforcing deregulation; of introducing “sunset clauses” to time-limit EU legislation; of providing more Treaty articles that expressly limited EU powers, such as was the case for education, health and cultural affairs; of allowing the Council a preliminary decision on draft legislation on the grounds of subsidiarity; and of setting up a special high-level advisory committee of national parliamentarians to supervise the application of the subsidiarity rule. Most member states also opposed the UK's proposed protocol constraining the Court of Justice[42].

Application of the principles of subsidiarity and proportionality

Treaty of Amsterdam did not amend the merit of subsidiarity’s legal regulation in the Treaty of Maastricht, but it gave a new article-number to the three paragraphs. After Amsterdam the former Article 3b became Article 5. Importance of subsidiarity issue was shown by the fact, that a protocol on the application of the principles of subsidiarity and proportionality was annexed to the Treaty of

---

[42] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 105.

Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts[43].

The text of the Protocoll is as follows.

THE HIGH CONTRACTING PARTIES, DETERMINED to establish the conditions for the application of the principles of subsidiarity and proportionality enshrined in Article 3b of the Treaty establishing the European Community with a view to defining more precisely the criteria for applying them and to ensure their strict observance and consistent implementation by all institutions;

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union;
TAKING ACCOUNT of the Interinstitutional Agreement of 25 October 1993 between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity;

HAVE CONFIRMED that the conclusions of the Birmingham European Council on 16 October 1992 and the overall approach to the application of the subsidiarity principle agreed by the European Council meeting in Edinburgh on 11-12 December 1992 will continue to guide the action of the Union's institutions as well as the development of the application of the principle of subsidiarity, and, for this purpose,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community:

(1) In exercising the powers conferred on it, each institution shall ensure that the principle of subsidiarity is complied with. It shall also ensure compliance with the principle of proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.

(2) The application of the principles of subsidiarity and proportionality shall respect the general provisions and the objectives of the Treaty, particularly as regards the maintaining in full of the acquis communautaire and the institutional balance; it shall not affect the principles developed by

[43] Official Journal C 340 , 10/11/1997 p. 0105

the Court of Justice regarding the relationship between national and Community law, and it should take into account Article F(4) of the Treaty on European Union, according to which 'the Union shall provide itself with the means necessary to attain its objectives and carry through its policies`.

(3) The principle of subsidiarity does not call into question the powers conferred on the European Community by the Treaty, as interpreted by the Court of Justice. The criteria referred to in the second paragraph of Article 3b of the Treaty shall relate to areas for which the Community does not have exclusive competence. The principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified.

(4) For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators.

(5) For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

The following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;

- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;

- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.

(6) The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures. Directives as provided for in Article 189 of the Treaty, while binding upon each Member State to which they are addressed as to the result to be achieved, shall leave to the national authorities the choice of form and methods.

(7) Regarding the nature and the extent of Community action, Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. While respecting Community law, care should be taken to respect well established national arrangements and the organisation and working of Member States' legal systems. Where appropriate and subject to the need for proper enforcement, Community measures should provide Member States with alternative ways to achieve the objectives of the measures.

(8) Where the application of the principle of subsidiarity leads to no action being taken by the Community, Member States are required in their action to comply with the general rules laid down in Article 5 of the Treaty, by taking all appropriate measures to ensure fulfilment of their obligations under the Treaty and by abstaining from any measure which could jeopardise the attainment of the objectives of the Treaty.

(9) Without prejudice to its right of initiative, the Commission should:
- except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents;

- justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect. The financing of

Community action in whole or in part from the Community budget shall require an explanation;

- take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved;

- submit an annual report to the European Council, the European Parliament and the Council on the application of Article 3b of the Treaty. This annual report shall also be sent to the Committee of the Regions and to the Economic and Social Committee.

(10) The European Council shall take account of the Commission report referred to in the fourth indent of point 9 within the report on the progress achieved by the Union which it is required to submit to the European Parliament in accordance with Article D of the Treaty on European Union.

(11) While fully observing the procedures applicable, the European Parliament and the Council shall, as an integral part of the overall examination of Commission proposals, consider their consistency with Article 3b of the Treaty. This concerns the original Commission proposal as well as amendments which the European Parliament and the Council envisage making to the proposal.

(12) In the course of the procedures referred to in Articles 189b and 189c of the Treaty, the European Parliament shall be informed of the Council's position on the application of Article 3b of the Treaty, by way of a statement of the reasons which led the Council to adopt its common position. The Council shall inform the European Parliament of the reasons on the basis of which all or part of a Commission proposal is deemed to be inconsistent with Article 3b of the Treaty.

(13) Compliance with the principle of subsidiarity shall be reviewed in accordance with the rules laid down by the Treaty.

The trend towards exorbitant use of Protocols and Declaration was maintained at Amsterdam. A large number of these texts are little more than window-dressing, devoid of significant content.

However, several are of major significance. However, it is the Protocol on the application of the principles of subsidiarity and proportionality which carries the broadest significance for institutional and constitutional culture. It is motivated be the laudable objective of achieving greater precision in defining the criteria for applying the principles, thereby improving consistency in their implementation by all the institutions. This forms part of the broader context of bringing decisions-making as close as possible to citizen. In thirteen paragraphs the Protocol brings together in a more-or-less coherent manner the texts applicable to subsidiarity which have accumulated since its elavation at Maastricht to a principle of EC law to be found in the Treaty. In particular, the overall approach to the application of the subsidiarity principle agreed by the Edinburgh European Council in December 1992 and the 1993 inter-institutional Agreement between the Parliament, the Council and the Commission on Procedures for Implementing the Principle of Subsidiarity provide the background to the Protocol[44].

The Protocol makes clear that the responsibility for ensuring compliance with the principle of subsidiarity is borne by all the institutions in the areas in which they exercise their powers. The same is true of the principle of proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives on the Treaty. The principle of subsidiarity provides a guide as to how Community powers which are not exclusive are to be exercised at the Community level. It is significant that the Protocol spells out that, contrary to much ill-informed comment at national level, the subsidiarity principle is not a lever designed to secure renationalization of power. Instead, it operates whitout preconception in order to help identify what Sir Leon Brittan has described as the „best level” for legislative and administrative action. The Protocols insists that: „Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the

[44] Weatherill, S.–Beaumont, P.: EU Law. Third Edition. London, 1999. p. 27.

Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified". This perception in turn sheds light on the difficulty inherent in any attemt to reduce subsidiarity to a set of rigid criteria. Such distillation may contradict the very essence of subsidiarity, which lies in its flexibility and dynamism[45].

A key difficulty for the lawyer seeking to grapple with the intricacies of subsidiarity is the deathy of justiciable benchmarks. The Protocol stipulates that: „For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators."At the very least, this ensures a procedural control. Community acts must demonstrate on their face how the demands of Article 5 (ex 3b) are met or else risk annulment by the Court, excepting only those acts falling within the Community's exclusive competence to which the second paragraph of Article 5 (ex 3b) is inapplicable. Prior to the entry into force of the Amsterdam Treaty, the Court declined to annul a Directive for inadequate reasoning in circumstances where it felt the elements demonstrating compliance with subsidiarity could be deduced from the Preamble even though explicit mention of subsidiarity was absent. The Protocol does not necessarily preclude such a conclusion post–Amterdam, for it does not demand explicit connection between reasons given and subsidiarity as such. However, it has been common since the Maastricht Treaty entered into force for preambles to EC acts to include explicit reference to the principle of subsidiarity and it is probable that this will become standard practice.

---

[45] Weatherill, S.–Beaumont, P.: EU Law. Third Edition. London, 1999. p. 28.

The Protocol offers a helpful set of guidlines for making the assessment whether Community action is to be preferres over action at national level[46].

Attention is paid not only to wether the Community should act, but also to what form that action should take: „The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement." Specifically, directives are, in principle to be preferred over regulations, and framework directives over detailed measures. Furthermore: „Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty." Concern to rely on, rather than to disrupt, established national arrangements has acquired an increasingly prominent place in Community regulatory policy. Within this trend is the deeper appreciation of minimum harmonization, and greater reliance on soft law instruments such as recommendations and communications. On this point, subsidiarity and proportionality operate in tandem. Indeed, the third paragraph of Articel 5 (ex 3b), which stipulates that „Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty" is inspired by the case of law of the Court which shaped the proportionality principle in Community law. However, the Protocol repeats the message that subsidiarity's function is not to immunize national action from the influence of Community norms in its insistence that even where subsidiarity „leads to no action being taken by the Community, Member States are required in their action to comply with the general rules laid down in Article 10 of the Treaty, by taking all appropriate measures to ensure fulfilment of their obligations under the Treaty and by abstaining from any measure which could jeopardize the attainment of the objectives of the Treaty"[47].

---

[46] Weatherill, S.–Beaumont, P.: EU Law. Third Edition. London, 1999. p. 28-29.
[47] Weatherill, S.–Beaumont, P.: EU Law. Third Edition. London, 1999. p. 29.

Subsidiarity as a feature of instituional culture is developed in the Protocol. The Commission is enjoined to consult widely before proposing legislation and, wherever appropriare, to publish consultation documents, except in cases of particular urgency or confidentiality. The prevalence of Green and White Papers in recent years bears witness to the Commission's determination to take the impulse towards openess to heart. Proposals should be justified with regard to the principle of subsidiarity. The Parliament and the Council, in examining Commissions proposals and in preparing any envisaged amendments of their own, are directed to consider consistency with Article 5 (ex 3b). In the course of the codecision and cooperation procedures the Council is required to provide the Parliament with a statement of the Council's reasons for adopting its common position in the light of the subsidiarity principle. The Council is also required to inform the Parliament of the reasons if it regards all or part of a Commission proposal as inconsistent with 5 (ex 3b) of the Treaty[48].

Since Maastricht, subsidiarity has rapidly become a major analytical tool for examining the conduct of Community law and policy-making. It has been difficult to avoid the conclusion that the Commission is the Institution most heavily committed to taking subsidiarity seriously. This appears to be the Commissions's own view. In its first annual report to the European Council on the subsidiarity principle it observed drily that'one cannot help observing that principle and practice are often far apart with member states meeting within the Council often adopting positions on individual cases at variance with their respect in principle for Article (5 ex 3b)[49].

The Lawyer, and perhaps especially the judge, eyeing the place of the subsidiarity principle in the EC Treaty may be less sanguine. However, subsidiarity is very much here to stay in EC law

[48] Weatherill, S.–Beaumont, P.: EU Law. Third Edition. London, 1999. p. 30.
[49] Weatherill, S.–Beaumont, P.: EU Law. Third Edition. London, 1999. p. 30-31.

and policy. The Community, like the United States before it, needs to develop its own method of assimilating national and regional diversity within broader integrated structures. The United Kingdom insisted that the word "federal" be excluded from the Maastricht Treaty and, given the lack of mutual understanding between states with different legal and political traditions as to the meaning of federalism, there is much to be said for the view that the introduction of the word would have been more hindrance than help. Indeed, an examination of federal system throughout the world reveals many different models. Significantly more power is vested in the central institution in the United States than in, for example, but it attempts to put flesh on the bones of the subsidiarity principle by attaching to the EC Treaty the Protocol which contributes to its shaping as a workable basis for guiding institutional and constitutional choices[50].

The new Protocol on Subsidiarity has at least two consequences. First, it confirms that both elements of Article 3b, subsidiarity and proportionality, must be taken together. Second, it makes it potentially more difficult for the Court of Justice to argue that although the interpretation of subsidiarity comes within its jurisidiction it is not in practice justiciable.

The renewed emphasis on the correct use of directives – binding as to results but permissive as to the member states' choice of form and method - is also to be welcomed. The Commission's obligation to use green papers, practised since 1992, is already serving to deepen the consultative element in the Union's law-making processes[51].

All in all, the Protocol on Subsidiarity is a useful compromise that, if the political will is there to exploit it, will continue to deepen the federal character of the European Union. Doubtless there will be frequent recourse to the text of this Protocol. One of the first areas of

---

[50] Weatherill, S.–Beaumont, P.: EU Law. Third Edition. London, 1999. p. 31-32.

[51] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 106.

likely controversy on the grounds of subsidiarity is that of tax harmonisation[52].

Conclusions of Working Group of the European Convention on the Principle of Subsidiarity[53]

Working on the basis of its mandate (CONV 71/02), the Working Group on the Principle of Subsidiarity agreed on a series of proposals intended to improve the application and monitoring of the principle of subsidiarity.

Finally, the Group considered that certain general measures, detailed examination of which would, however, have exceeded its terms of reference, could facilitate the application and monitoring of the principle of subsidiarity.

Principles and approaches to applying and monitoring the principle of subsidiarity

(1) It has become evident that the principle of subsidiarity is currently already under examination by the Institutions taking part in the legislative procedure on the basis inter alia of the criteria established in the Treaty and in particular in the Protocol on the principles of subsidiarity and proportionality. The principle of subsidiarity is also subject to *ex post* judicial review by the Court of Justice. The Group nevertheless took the view that it could still be improved upon, as regards both application and monitoring.

(2) However, these improvements should not make decision-making within the institutions more cumbersome or lengthier, nor block it. The Group therefore felt that the creation of an *ad hoc* body responsible for monitoring the application of the principle of subsidiarity should be ruled out.

---

[52] Duff, Andrew (ed.): The Treaty of Amsterdam. Text and commentary. London, 1997. p. 106.

[53] CONV 286/02 WGI 15 REPORT, Brussels, 23 September 2002 (24.09) (OR. fr)

(3) The Group considered that some of these improvements would require amendments to the Treaty and in particular to the Protocol on the application of the principles of subsidiarity and proportionality.

(4) The Group was at pains to ensure that the improvements which it proposes should be effective independently of the institutional architecture specific to each Member State. It made a point at the same time of avoiding interference with any national institutional debates.

(5) The Group considered that as the principle of subsidiarity was a principle of an essentially political nature, implementation of which involved a considerable margin of discretion for the institutions (considering whether shared objectives could "better" be achieved at European level or at another level), monitoring of compliance with that principle should be of an essentially political nature and take place before the entry into force of the act in question.

(6) The Group also felt that *ex ante* political monitoring of the principle of subsidiarity should primarily involve national parliaments. The Group felt that monitoring by national parliaments in relation to their governments should be strengthened as regards the determination of the position of the latter on Community questions. This approach appears also broadly to be shared by the Convention Working Group on national parliaments, chaired by Ms Stuart, with which the Group on the Principle of Subsidiarity held a joint meeting, and which is considering the drafting of a Code of Conduct on the matter. However, members of the Group consider that an *ad hoc* mechanism should be established enabling national parliaments to be more involved in monitoring compliance with subsidiarity, while ensuring that the mechanism is flexible and does not result in the lengthening of the legislative process or blocking it, and does not lead to the creation of a new bureaucracy.

(7) Agreement was reached within the Group that *ex post* monitoring of subsidiarity should, on the other hand, be of a judicial

nature. In this respect the conditions for referral to the Court of Justice should be broadened. On the basis of these principles, the Group drew up the following proposals to improve the application and monitoring of the principle of subsidiarity.

The Group's proposals to the Convention

Broad agreement was reached between members of the Group that the Convention should be presented with proposals on three lines:

(a) reinforcing the taking into account and the application of the principle of subsidiarity by the institutions participating in the legislative process, (i.e. the European Parliament, Council and Commission) during the drafting and examination phase of the legislative act;

(b) setting up an "early warning system" of a political nature, intended to reinforce the monitoring of compliance with the principle of subsidiarity by national parliaments;

(c) broadening the possibility of referral to the Court of Justice for non-compliance with the principle of subsidiarity.

(a) reinforcing the application of the principle of subsidiarity during the phase when a legislative act is being drafted and proposed by the institutions participating in the legislative process:

The Group felt that the principle of subsidiarity would be applied all the better the earlier it was taken into account in the legislative process. In the drafting phase of a legislative act, responsibility for compliance with subsidiarity rests with the Commission. It is for the Commission to consult, as soon as possible, all the players (particularly the Member States, economic operators, local and regional authorities, and the social partners) who may be affected directly or indirectly by the legislative act being planned or drafted. In drawing up its legislative proposals, the Commission should take account of reinforced and specific obligations concerning justification with regard to subsidiarity. Thus any legislative proposal should contain a "subsidiarity sheet" setting out

circumstantiated aspects making it possible to appraise compliance with the principle of subsidiarity. This sheet should contain some assessment of its financial impact, and in the case of a Directive, of its implications for the rules to be put in place by Member States (at national or other level). To give tangible form to these proposals, the Protocol on subsidiarity currently annexed to the Treaty would have to be amended. The presentation of the Commission's annual legislative programme would seem to be an important occasion providing an opportunity for a preliminary debate on subsidiarity. The Group therefore proposes that that programme should be discussed by the European Parliament and national parliaments.

The Working Group also considered the possibility of the appointment, within the Commission, of a "Mr or Mrs Subsidiarity", or of a Vice-President specifically responsible for ensuring his institution's compliance with the principle of subsidiarity. Any proposal of a legislative nature would necessarily be referred to him. He (or she) would provide an outside view to the departments which had drafted it. This Vice-President could, if necessary, be given a hearing by national parliaments. However, despite some advantages (particularly that of strengthening the application of the principle of subsidiarity by the Commission, and providing national parliaments with a single identifiable interlocutor within the Commission who could be heard in capitals), this proposal did not receive sufficient support within the Group to be adopted. In particular, it was stressed that each Commissioner should be responsible for compliance with the principle of subsidiarity in the areas under his competence, and that it was a matter for the Commission to decide on its internal organisation.

(b) setting up an "early warning system" allowing national parliaments to participate directly in monitoring compliance with the principle of subsidiarity

The Group proposed the creation of a new *ex ante* political monitoring mechanism involving national parliaments. The

innovative and bold nature of this proposal should be highlighted: for the first time in the history of European construction, it involves national parliaments in the European legislative process. Such a mechanism would enable national parliaments to ensure correct application of the principle of subsidiarity by the institutions taking part in the legislative process through a direct relationship with the Community institutions. In concrete terms, the Group proposes that the Treaty should stipulate that:

- the Commission should address directly to each national parliament **2**, at the same time as to the Community legislator (Council and European Parliament), its proposals of a legislative nature (the Protocol on national parliaments currently entrusts this task to governments);

- with six weeks from the date a proposal is transmitted, and before the legislative procedure proper is initiated, any national parliament would have the possibility of issuing a reasoned opinion regarding compliance with the principle of subsidiarity by the proposal concerned.

This opinion should be expressed by a majority and commit the whole of the assembly concerned in accordance with procedures which it will itself determine. That reasoned opinion would be addressed to the Presidents of the European Parliament, the Council and the Commission. It should relate exclusively to the question of compliance with subsidiarity (and not to the substance of the proposal in question) and could be of a general nature or concern only one particular provision of the proposal in question. It could also alert the Community legislator to the possibility of a violation of the principle of subsidiarity if one or other provision were amended in some way during the legislative process.

The consequences of such opinions for the continuation of the legislative process could be modulated, depending on the number and substance of the reasoned opinions received.

· if, within the six-week deadline, the Community legislator received only a limited number of opinions, he would give further specific reasons for the act with regard to subsidiarity;

· if, within the six-week deadline, the legislator received a significant number of opinions from one third of national parliaments, the Commission would re-examine its proposal. That re-examination may lead the Commission either to maintain its proposal, amend it or withdraw it.

This "early warning system" would place all national parliaments on an equal footing. It would make it possible to encourage them to examine the Commission's legislative proposals with regard to the principle of subsidiarity and to ensure that the concerns that they might be led to express further to that examination would be taken more fully into account by the Union legislator (Council and European Parliament). At the same time, by obviating the creation of a new body, it would heed the warnings voiced within the Working Group against the risk of making the institutional architecture and the legislative procedure more cumbersome or the further development of a weighty bureaucracy.

Several members of the Working Group felt that the convening of the Conciliation Committee(Article 251 of the TEC) could also be an appropriate moment again to involve national parliaments in monitoring the principle of subsidiarity. The Group therefore proposes that, once the Conciliation Committee has been convened, the Commission should send national parliaments the Council's common position and the amendments adopted by the European Parliament. National parliaments would thus be able to make known to their government their assessment as regards subsidiarity, but also if they wished to do so, under the same conditions as set out above and within the deadline for the conduct of the conciliation procedure (six weeks), to send a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission on the application of the principle of subsidiarity.

There is a broad consensus on the part of the Group's members on all the above proposals, although some of them had initially favoured the creation of an ad hoc body to monitor application of the principle of subsidiarity.

(c) broadening the possibility of referral to the Court of Justice on grounds of non-compliance with the principle of subsidiarity

The Group agreed that the *ex post* judicial review carried out by the Court of Justice concerning compliance with the principle of subsidiarity could be reinforced. To take account of the primarily political nature of monitoring subsidiarity, it was important to link the possibility of appealing to the Court against violation of the principle of subsidiarity with the use by national parliaments of the early warning system proposed above. Recourse to judicial proceedings must be able to occur only in limited and probably exceptional cases, when the political phase has been exhausted without any satisfactory solution being found by the national parliament(s) involved.

The Group therefore proposes that a national parliament (or one chamber thereof, in the case of a bicameral parliament) which has delivered a reasoned opinion under the early warning system described above, should be allowed to refer the matter to the Court of Justice (CJEC) for violation of the principle of subsidiarity.

The Group further proposes an innovation, by also allowing the Committee of the Regions, the competent consultative body representing all the regional and local authorities in the Union at European level, the right to refer a matter to the Court of Justice for violation of the principle of subsidiarity. This referral would relate to proposals which had been submitted to the Committee of the Regions for an opinion and about which, in that opinion, it had expressed objections as regards compliance with subsidiarity.

On the other hand, a majority of Group members consider that the degree of and arrangements for the involvement of regional and local authorities in the drafting of Community legislation should be

determined solely in the national framework. Thus they claim that the mechanism proposed in this document does not, where appropriate, prevent consultation in a national framework with regional or local assemblies. Any other approach would, moreover, risk affecting the equilibrium established between the Member States at European level. For these reasons, the Group did not accept the proposal to grant a right of appeal to the Court of Justice for violation of the principle of subsidiarity to regions which, within the framework of national institutional organisation, have legislative capacities. The Group also examined the possibility of establishing within the Court of Justice an ad hoc chamber responsible for questions of subsidiarity. However, it considered that it would be for the Court itself to take the necessary organisational measures.

Finally, the Group looked at the possibility of establishing an ex ante judicial mechanism (between adoption of the Community act and its entry into force), which would be based on certain provisions of the Member States for monitoring the constitutionality of laws. In the end, it abandoned this idea on the grounds that that the introduction of a judicial review in the legislative phase would be tantamount to the monitoring of subsidiarity losing its primarily political nature. Moreover, the Group thought that a judicial review of compliance with the principle of subsidiarity at a different stage from the monitoring of compliance with other principles, such as the allocation of competence or proportionality, would have been difficult to implement.

Guidelines

The Group agreed that the proposals set out above did not exhaustively cover the range of problems related to subsidiarity. In particular, since the principle of subsidiarity governs the exercise of competences, a better distribution of the latter, in a manner clearer and more comprehensible to citizens, would be a determining factor in promoting better application of the principle of subsidiarity. The proceedings of the Group chaired by Mr Christophersen are

therefore of quite particular importance. The Group also recalls that the Protocol on national parliaments should be strengthened, to promote tracking by national parliaments of their governments, as regards the monitoring of the principle of subsidiarity. The Group therefore calls upon national parliaments to exercise their responsibilities in the matter to the full. The Group also believes that a simplification of the legislative acts available to the Union, and a clarification of their effects, would promote the application and monitoring of the principle of subsidiarity given particularly that it would make it easier to determine responsibility as regards the implementation of such acts by the Community or by the Member States.

Differentiation in the Treaty between acts of a legislative nature and acts of an executive nature would be desirable in this respect. The Group also considers that such simplification would promote application of the principle of proportionality by allowing greater recourse to acts adapted to the intensity of the action required.

Finally, the Group believes that it would be desirable for cases before the Court of Justice relating to the delimitation of competences or subsidiarity to be dealt with as speedily as possible.

Draft Treaty Establishing a Constitution for Europe[54]

The draft Treaty Establishing a Constitution for Europe regulates the principle of subsudiarity as follows.

TITLE III: UNION COMPETENCES

Article 9: Fundamental principles

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

[54] Adopted by consensus by the European Convention on 13 June and 10 July 2003

2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution. The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph.

Article 16: Areas of supporting, coordinating or complementary action

1. The Union may take supporting, coordinating or complementary action.

2. The areas for supporting, coordinating or complementary action shall be, at European level:

- industry
- protection and improvement of human health
- education, vocational training, youth and sport
- culture
- civil protection

3. Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part III may not entail harmonisation of Member States' laws or regulations.

Article 17: Flexibility clause

1. If action by the Union should prove necessary within the framework of the policies defined in Part III to attain one of the objectives set by the

Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall take the appropriate measures.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article 9(3), the Commission shall draw Member States' national Parliaments' attention to proposals based on this Article.

3. Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

New regulation in Constitution of the Republic of Hungary concerning EU-related sharing capacities

Constitution of the Republic of Hungary (Act XX of 1949) as it was amended in 2002 (Act LXI. of 2002 beeing in force since 23rd December 2002) in its Section 2/A contains also a significant subsidiarity bottomline in connection with sharing capacities among Republic of Hungary, Member States and the European Union:

Section 2/A (1) By virtue of treaty, the Republic of Hungary, in its capacity as a Member State of the European Union, may exercise certain constitutional powers jointly with other Member States to the extent necessary in connection with the rights and obligations conferred by the treaties on the foundation of the European Union and the European Communities (hereinafter referred to as "European Union'); these powers may be exercised independently and by way of the institutions of the European Union. (2) The ratification and promulgation of the treaty referred to in Subsection (1) shall be subject to a two-thirds majority vote of the Parliament.

Development of European Contract Law as an Example of Subsidiarity

Subsidiarity brought about two obvious consequencies on EU legislation. Subsidiarity slowed down EU legislation and at the same time it extended the scope of the approximation of laws activity to such legal areas, which earlier had not been included. Efforts

targeting a European Civil Code or at least a European Contract Law draft have been intensified during the course of the recent years.

The European Parliament has adopted a number of resolutions on the possible harmonisation of substantive private law. In 1989 and 1994 the European Parliament called for work to be started on the possibility of drawing up a common European Code of Private Law. The Parliament stated that harmonisation of certain sectors of private law was essential to the completion of the internal market. The Parliament further stated that unification of major branches of private law in the form of a European Civil Code would be the most effective way of carrying out harmonisation with a view to meeting the Community's legal requirements in order to achieve a single market without frontiers.

Furthermore, in its resolution of 16 March 2000 concerning the Commission`s work program 2000, the European Parliament stated "that greater harmonisation of civil law has become essential in the internal market" and called on the Commission to draw up a study in this area. In its reply of 25 July 2000 to the European Parliament, the Commission stated that it would "present a communication to the other Community institutions and the general public with the aim of launching a detailed and wide-ranging discussion, without losing sight of the date of 2001 set by the European Council" at Tampere. The Commission also stated that "in view of the importance of secondary legislation for the development of the internal market and future commercial and technological trends, this communication will analyse this legislation - in force or in preparation - at Community level in the relevant areas of civil law in order to identify and assess any gaps, as well as the academic work which has been or is being carried out".

Indeed the conclusions of the European Council held in Tampere requested, in paragraph 39, 'as regards substantive law an overall study on the need to approximate Member State's legislation in civil matters in order to eliminate obstacles to the good functioning of civil proceedings'. A consultative document has been

announced in the Commission's "scoreboard for the evaluation of progress in the establishment of an area of freedom, security and justice". The Tampere European Council dealt with issues concerning judicial civil cooperation on the basis of title IV of the EC Treaty. In this regard this Communication can be considered as a first step towards the implementation of the Tampere conclusions. Finally, this Communication was also included in the Commission communication on E-Commerce and Financial Services within the policy area of ensuring coherence in the legislative framework for financial services.

Leading representatives of the academic world have had detailed discussions on harmonising certain sectors of contract law. Two drafts of a contract code and of general principles of contract law8 have recently been published. This academic work continues, and includes work on other issues not included in the two published drafts, such as contracts in the specific areas of financial services, insurance contracts, building contracts, factoring and leasing as well as some areas of the law of property. In particular, the academic work is focusing on areas that have a particular significance for securing rights across the European borders. The aim of the academic work carried out varies from the establishment of a binding code to principles similar to `restatements´ that can be used to provide reliable comparative information on the European legal situation in these areas. The approximation of certain specific areas of contract law at EC level has covered an increasing number of issues. In the area of consumer law no fewer than seven Directives dealing with contractual issues have been adopted in the period from 1985 to 1999. Other areas also show increased harmonisation. This sectoral harmonisation has concerned specific contracts or specific marketing techniques. Directives have been adopted where a particular need for harmonisation was identified[55].

[55] Brussels, 11.7.2001. COM(2001) 398 final.
http://www.europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/cont_law_02_en.pdf

Purpose of the Communication of the Commission to the Council and the European Parliament on European Contract Law[56]

The European Commission is interested at this stage of the discussion in gathering information on the need for farther-reaching EC action in the area of contract law, in particular to the extent that the case-by-case approach might not be able to solve all the problems which might arise. This does not preclude the right of initiative of the Commission in the future to make proposals for specific actions on contract law aspects if a specific need for this exists, in particular on-going initiatives launched or to be launched in the framework of the Internal Market policy.

The purpose of this Communication is therefore to broaden the debate by encouraging contributions from consumers, businesses, professional organisations, public administrations and institutions, the academic world and all interested parties.

Contract law constitutes the principal body of law regulating cross-border transactions and some Community legislation regulating contract law already exists, although this legislation has taken a sector-bysector approach.

The areas concerned by this Communication include contracts of sale and all kind of service contracts, including financial services. General rules on performance, nonperformance and remedies are an indispensable basis for these contracts and are therefore also covered. Additionally, rules on general issues such as the formation of a contract and its validity and interpretation are also essential. Furthermore, because of the economic context, rules on credit securities regarding movable goods as well as the law of unjust enrichment may also be relevant. Finally, the aspects of tort law linked to contracts and to its other features relevant to internal market should also be taken into consideration insofar as they are already part of existing EC law.

---

[56] Brussels, 11.7.2001. COM(2001) 398 final.
http://www.europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/cont_law_02_en.pdf

In certain areas of private law, contracts are only one of the tools of regulation given the complexity of the relationship between the parties concerned. These areas, such as employment law and family law, give rise to particular issues and are not covered by this Communication.

The Commission intends to focus the attention of this Communication on two areas: firstly on possible problems resulting from divergences of national contract law, and secondly on options for the future of contract law in the EC. This will enable the Commission to define its future policy in this area and to propose any necessary measures[57].

Options for future EC initiatives in contract law

Responses to this document may show that there are impediments to the functioning of the internal market for cross border transactions. If these problems cannot be solved satisfactorily through a case-by-case approach, a horizontal measure providing for comprehensive harmonisation of contract law rules could be envisaged at EC level. However, there are of course limits on the power of the Commission and the other EC institutions to intervene in this area.

Any measure must be in accordance with the principles of subsidiarity and proportionality, as described in Article 5 of the EC Treaty and the protocol on subsidiarity and proportionality. As the European Parliament pointed out in its resolutions on the Better Lawmaking reports, the subsidiarity principle is a binding legal standard that does not rule out the legitimate exercise of the EU's competencies. The need to achieve balanced application of this principle has been highlighted by a number of Member States23 and the European institutions.

The principle of subsidiarity serves as a guide as to how the Community powers are to be exercised at Community level.

[57] Brussels, 11.7.2001. COM(2001) 398 final. http://www.europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/cont_law_02_en.pdf

Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified. There should be clear benefits to taking action at Community level instead of national level. Where the intention is to have an impact throughout the EC, Community-level action is undoubtedly the best way of ensuring homogeneous treatment within national systems and stimulating effective co-operation between the Member States.

Moreover, legislation should be effective and should not impose any excessive constraints on national, regional or local authorities or on the private sector, including civil society. The principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. Clearly, the Commission is duty-bound to propose whatever measures are necessary to supplement Member States' efforts to achieve the Treaty's objectives. The Commission follows two criteria designed to guarantee that fixed objectives are complied with in both political and legal terms: the ability of national and regional authorities, and of civil society, to act to achieve the objectives laid down in a Community provision; and the compatibility or conformity of these objectives with national or sectoral practices.

Preparing legislative proposals by way of communications and green and white papers is one way of consulting the private sector, civil society and institutions at all levels on the expediency, level and content of legislative instruments in order to achieve these objectives. Additionally, the Commission will seek to identify areas

of intervention by involving both civil society and business with a view to producing legislative instruments geared to users' real needs. This Communication and possible further documents are intended to determine whether EC action is needed and if so in which areas.

There are a number of options that can be considered should the case-by case approach not fully solve the problem. This Communication briefly examines four possible scenarios:

I. no EC action;
II. promote the development of common contract law principles leading to more convergence of national laws;
III. improve the quality of legislation already in place;
IV. adopt new comprehensive legislation at EC level.

There are other options beyond these, and these options could also be combined. These options may cover the field of contract law or other fields within private law. Each option could be used for specific economic sectors or apply horizontally. The binding character of a measure would depend on the area to which the measure applied and all the interests at stake. However, as a matter of principle, all options should allow contracting parties the freedom they need to conclude the contract terms best suited to their specific needs.

Another approach, which is not discussed here as it goes beyond the level of a European initiative, could be the negotiation of an international treaty in the area of contract law. This would be comparable to the CISG but with a broader scope than purely the sale of goods. However, the provisions of the CISG could also be integrated into options II and IV which would increase their acceptance incommercial and legal practice[58].

[58] Brussels, 11.7.2001. COM(2001) 398 final. http://www.europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/cont_law_02_en.pdf

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

RE-ORGANISING PUBLIC SERVICE IN EUROPE. AN EMPIRICAL STUDY ON THE RESULTS OF OUTSOURCING

Angelo Paletta[*]

Abstract

Sulla base di una ricerca empirica condotta su 16 paesi OCSE sono esaminate le diverse modalità con le quali i casi selezionati hanno cercato di rispondere all'esigenza di riorganizzare il settore pubblico, con particolare riguardo alla centralizzazione degli acquisti ed all'esternalizzazione dei servizi informatici. L'indagine si focalizza sugli esiti delle strategie di outsourcing dal punto di vista dell'efficienza economica, della qualità e innovazione del servizio, delle condizioni occupazionali e professionali dei dipendenti.

Introduction

Outsourcing has become one of the most outstanding tools of Western governments. It is preferred by public authorities (e.g. for tax collection), by direct public services (e.g. transport and energy), but also, and above all, by services that fortify the first two (e.g. supplies, information systems, consulting services, cleaning services etc.) (Kickert and Klijn, 1997; Maltoni, 2005).

New Public Management has inspired almost all outsourcing programmes in the public sector and has spread rapidly throughout Continental Europe since it was first applied in the Anglo-Saxon world in the early 1980s (Kickert, 1997; Dunleavy and Hood 1994). This new form of management envisages the simplification of red tape by means of the setting up of independent organisational units, whose management and financial autonomy is guaranteed before services are transferred from the public to the private domain (Pollitt

[*] Department of Business Economics, Alma Mater Studiorum – Università di Bologna

and Bouckaert, 2004; Capano, 2003).

As a result, the role of public authorities has been redefined and transformed into a "catalytic administration model", able to guide and coordinate, rather than manage directly (Osborne and Gaebler, 1992; Rhodes, 1996).

Outsourcing is carried out in many different ways, e.g. by Contracting out, contracting in, deregulation, by a vouchers system, public-private partnerships and by the transformation of public bodies into private companies with major shareholders (Walsh, 1995; Paletta, 1999).

Whatever the method, there are two goals that ought to be reached: augment economic productivity by reducing the costs and financial burden borne by citizens; and, increase effectiveness and quality and therefore the satisfaction of clients/users (Accademia Italiana di Economia Aziendale, 1984).

It cannot be determined beforehand which method will prove more effective, if the following factors are not first taken into account: the administrative history and traditions of a country, its singular socio-economic context, the nature, scope and complexity of the chosen method (Gualmini, 2003).

Regardless of the method chosen, all OECD member-states are called upon to ensure that an advanced streamlining process of state procedures adheres to such basic principles as transparency, equal opportunities for all, legitimate competitiveness in invitations to bid. Even from a legal perspective, it is easy to discern the need for judicious and far-sighted criteria such as "economically advantageous offers", as opposed to the more simplistic criterion of "lower prices".[1]

---

[1] See the directives approved by the Member States of the European Union with regards Public Procurement (Directive 92/50/EEC), Public Supply Contracts (Directive 93/36/EEC), Public Works Concession Contracts (Directive 93/37/EEC) and the Coordination of Procurement Procedures in "Special Sectors", such as the water, energy, transport and telecommunications sectors (Directive 93/38/EEC and Directive 2004/17/EEC). As regards those countries not part of the EU, the above-

Research Aims and Methodology

The paper is based on an empirical study of 16 OECD member-states[2], and examines the diverse ways in which the method(s) chosen helped reach the aim of reorganising the public sector. The paper focuses on the outsourcing of two types of services offered by public authorities: public procurement services (in 12 countries) and information technology services (in England, Australia, Norway and Poland). A complete summary of the case studies is to be found in Table 1.

	Privatisation	Contracting out	Public Corporatisation	Partnership/ Public Agreement
Great Britain		IT		
France	PP			
Germany				PP
The Netherlands	PP			
Spain				PP
Ireland			PP	
Italy	PP			
Poland		IT		
Norway		IT		
Sweden			PP	
Denmark	PP			
Finland	PP			

mentioned directives are outlined in the *Government Procurement Agreement* (GPA), drawn up on the 15th April, 1994, which entered into force on the 1st January, 1996.

[2] The countries analysed (France, Germany, England, Ireland, Italy, The Netherlands, Spain, Sweden, Denmark, Poland, Finland, Hungary, The United States, Canada, Australia and New Zealand) represent various political and institutional, judicial and economic frameworks: The countries can be classified into four groups: Anglo-Saxon countries, countries of Traditional Continental Europe, North European countries and East European countries, recently freed from totalitarian regimes and now being integrated into the European Union.

New Zealand				PP
Australia			IT	
Canada				PP
U.S.A.				PP

Table no. 1 – Case studies and Outsourcing Strategies
Legend: PP: Public Procurement, IT: Information Technology

The use of outsourcing strategies in the public sector does not necessarily mean that the sector's role, as such, is at risk. This is particularly clear when taking into consideration the centralisation process of purchases, where outsourcing strategies are applied internally, within the sector. Indeed, as shown in Table no. 1, public structures are not eliminated, but rather reorganised and re-structured.

The 16 case studies revealed the use of the following outsourcing strategies:

1. Privatisation, defined as the setting up of a private company with public capital investment. Such privatisation was carried out in France, The Netherlands, Denmark and Finland, for Public Procurement Services (PP);

2. Contracting out, seen as a process by which a business, once a part of the public sector, has been "bought over" by the private sector. This form of "externalising" is common in Information Technology Services (IT);

3. Corporatisation, the term used when a business is allowed a certain amount of economic and legal autonomy, albeit an economic body directly under a public body. Corporatisation can be "private" or "public". In the first case, the business is entirely in the hands of the public body, which owns 100% of the capital. In the second case, examined in this paper, the term "public corporatisation" is used to indicate that public activities and services are controlled by new public authorities or agencies, which, however, remain an integral

part of the public administration. Examples are the agencies set up in Ireland and Sweden for PP and in Australia for IT;

4. Externalisation policies, resulting in the creation of partnerships, the drawing up of agreements or projects and programmes comprising various types of public bodies. Examples are to be found in Canada (*Contracts Canada,* now known as *Business Access Canada*) and in America (*Comm-PASS*), two procurement access and solicitation systems which reviewed their public procurement policies. In both cases, the creation of an autonomous organisation for the reorganisation project was excluded, although it was managed by an external public office.

This paper centres on the above outsourcing models and thus, aims to show that to reduce costs and/or improve service quality, the externalisation process needs to be accompanied by an appropriate form of management on behalf of the public authority in charge; an appropriate form of management of both the institutional structures and the organisational monitoring tools, thereby promoting competitiveness and guaranteeing the accountability of the public sector's "managers".

The research methods used were the following:

- the reconstruction of the decision-making process which led to the selection of outsourcing;

- the singling out of the strategies and institutional and organisational models used the most;

- the analysis of the results of outsourcing.

The paper focuses on the third point; in fact, the results of outsourcing are analysed in terms of 3 main performance aspects:

a. the financial aspect, related to the cost of services and management;

b. the quality aspect and the innovation of the sector, in relation to the services offered to the client and the ability to fulfil the expectations of the stakeholders;

c. the human resources aspect, in terms of the social impact, organisation and professional development of the staff.

Empirical Data on the Results of the Strategies Chosen for the Centralisation of Public Procurement and the Externalisation of IT Services

The Financial Aspect

The analysis of the 16 case studies soon showed how difficult it was to obtain quantitative information on the reduction of public procurement costs, because the necessary information was lacking, mainly as a result of the vast number of factors to be considered so as to determine the possible cost reductions.

The main idea behind the study was that the externalisation process produces interesting results from an economic perspective, if it leads to a decrease in *life cycle costing*. This belief could be verified if appropriate outsourcing strategies were applied and if red tape was bridled.

In four of the OECD member-states (England, Australia, Norway and Poland) the outsourcing of IT, introduced by central public authorities, was analysed.[3]

In England, the Tax Office recently signed a ten-year contract with a private company – *Electronic Data System Ltd* – for the provision of IT services, previously supplied by an internal agency. The Office estimated that it would save between 15% and 20% with the new service provider. Before externalising the service, the internal agency was formally evaluated to test its development potential and determine the costs of its service. However, the possibility of the Office investing in it in order to bring its level up to that of the private company was eventually excluded, and the Office opted for the private service providers (Puma, 1997).

In general, the case studies showed that the externalisation

[3] In three of the four countries examined (Poland, England and Australia), the externalised IT services are the ones that consolidate tax collection activities. The public authority in charge is the Ministry of Finance. Only in Norway do the IT services fall under the tutelage of social work and job placement offices. The Ministry of Labour does however have the role of *first mover*.

process of IT concentrated on innovative services, part and parcel of the development strategies of e-government. These services, more specifically those offered by the public administration sector, did not have skilled staff and training them would have cost too much.

What proved to be even more complex was the analysis of the financial results of public procurement. Evidence thereof, was the elevated number of countries (Australia, Canada, Denmark, Finland, Germany, Ireland, Italy, New Zealand, The Netherlands, Sweden, The United States) where different strategies were applied, and institutional and organisational solutions differed.

In many of the countries examined, there were a multitude of agencies or companies acting as a "central commission": public agencies in Ireland and Sweden, and private major shareholding companies in France, Italy, The Netherlands, Denmark and Finland. In the remaining 10 countries, the systems were basically decentralised, but equipped with certain instruments (e.g. framework agreements, partnerships, projects) aimed at voluntarily coordinating and re-organising the supplies policies of public authorities.[4]

A perfected centralisation system of public procurement was the basis for the saving of money during the entire "life-cycle" of the contract.

The main reason behind the centralisation of public procurement was not only to achieve economies of scale, so that public authorities would have more contracting power, but also to limit transaction costs (Williamson, 1975). Money could be saved by eliminating a series of activities and restrictions which cost money and were not necessarily linked to public procurement procedures. In Sweden, for example, an average cost reduction of 10% was recorded; this meant that 40% of all framework agreements were in the hands of 94% of the public management agency (Agency for

[4] Certain countries, such as Canada and New Zealand, use projects that are managed by a pre-existing public office.

Public Management, 2004).

A study carried out by Hansel, the Finnish procurement company, revealed that of the €10 billion spent per annum on purchases, 30% is for supplies. Below, is a list of the types of costs:

- "moving costs", such as transport costs, and in general, the costs of orders and logistics;
- "information costs", such as the costs of research and the selection of suppliers;
- costs related to "opportunistic behaviour" (e.g. when defects are received) or the costs of setting up evaluation and monitoring systems;
- "switching costs", such as a lack of return on investments, specifically made in case suppliers or supplying modes are changed.

The most consistent reductions were linked to e-procurement (European Commission, 2004). According to *Hansel*, the *Sentteri* solution allowed for the reduction of costs in Finland's public sector: in fact, cost reductions amounted to € 1, 5 billion per annum. The solutions affecting costs were those that focused on the entire e-procurement process, from the invitation to bid, to the evaluation of the various offers and the management of logistics.[5]

The Impact on the Quality and the Innovation of the Sector

In almost all of the case studies, it was noted that one of the immediate results of externalisation was that the public management agency consolidated the monitoring of the public sector, especially as regards the level and quality of the services offered.

The quality control systems focused on the service standards set by the public agency which managed the externalisation process. As for IT, in which case externalisation was carried out by a private body, the public agency included a number of clauses in the contract so as to protect itself from any non-performance risks, such as not

[5] For further information, consult: http://europa.eu.int/idabc/en/document/528/197

finishing the work within the time limits set, not meeting the pre-established standards, not protecting the data or annulling the contract.

The case studies showed that the IT sector was to be externalised not to make it more productive, but rather for reasons related to quality and innovation. A number of public agencies entrusted private businesses with the planning and management of the IT sector to better and speed up the technology of public bodies and give rise to an all-encompassing e-government development project.

The impact on the quality and service of the externalised sector was noticeably significant, especially as regards the extension of the services offered. Services became more varied and personalised and included:

- understanding the need of the public sector for supplies;
- adhering to the procedures of tendering;
- drawing up framework agreements with suppliers which public agencies can choose to abide by;
- drawing up contracts in favour of the agencies, either because that is one of their terms or because of intricate invitations to bid;
- consulting on the procedures of tendering and the management of contracts, and also looking at the possible return on public investment.

The innovation of the service comprised the technological development of the e-procurement sector.

The most advanced solutions in e-procurement allowed for the possibility to choose the type of method to be used. The various purchasing agencies could decide whether to buy from the central body, by means of on-line auctions based on electronic cataloguing, or independently, and oversee the entire transaction via the Internet.

The use of the Internet has significantly modernised the management and monitoring of procurement services, because:

1. it oversees the entire procurement process: from the

invitation to bid to the final payments;
2. it regulates the process, left entirely in the hands of the purchasing companies;
3. it manages the process of supplying and organising services and purchases.

Clients can be in direct contact with suppliers, thanks to a direct electronic transfer of data, known as *electronic data interchange* (EDI) which, on the one hand, contributes to the reduction of transaction costs, and on the other, improves delivery times, and the transparency, security and reliability of transactions.

The cases studies outlined the problem areas and limits of outsourcing, especially as regards centralisation policies.

In Italy, Corte dei Conti – the Audit Court which oversees the management of the state budget and the finances of nationalised industries – analysed the CONSIP system (aimed at aiding small and medium-sized enterprises), and paid particular attention to the management of contracts and the expenses of the country's public authorities for the period 2000-2003.

The Court determined that there is an enormous risk that an inappropriate practice allow for the selling of old technological products, and that extreme forms of standardisation could have a negative effect on the quality of the goods bought (even in the case of non-strategic supplies e.g. for the chancery).

Preliminary research showed that in certain cases much was saved, but not because of a decrease in the unit price (which was, in fact, not the case), but rather because of a drastic reduction in the number of orders. This, because of the poor quality of the products offered, or the unavailability of products, or delivery delays, which meant, that by the time they arrived, products had lost their original value.

In the above-mentioned cases, the control of the expenses resulted in a trade-off effect on the quality of the supplies.

Hence, the centralisation of purchases was not always the most appropriate of solutions. The best practices studied, showed

that the “productivity/quality” combination depended on a masterful mix of centralisation and decentralisation, determined by an assessment of the benefits and disadvantages of the various types of goods acquired and by the specific needs of the public agencies (SIGMA, 2000). One of the most significant examples is the situation in The Netherlands, where less than 4% of all centralised or decentralised procurement procedures are carried out by NIC (Nederlands Inkoopcentrum), a private company with public shareholders, created in 1990 for the centralisation of public procurement.

In 1999, the Dutch government drew up a plan of action to make procurement more efficient (Ministerie van Economische Zaken, 1999). The project would be headed by thirteen ministries and their respective agencies. An inter-departmental work group, christened *Professional Purchasing and Public Procurement* , would act as a facilitator and coordinator for the improvement of ministerial cooperation. Soon after, the group was transformed into an agency, the *Professional Purchasing and Procurement Agency* (PIA), based at the Ministry of Economic Affairs and responsible for the implementation of European procurement norms.

The Impact on Working Conditions and on the Professional Development of Employees

The analysis of the impact on the working conditions of the staff, both at local and national level, refers directly to the centralisation strategy chosen and the ensuing institutional and organisational model. The possible strategies are:

1. privatisation;
2. contracting out;
3. public corporatisation;
4. partnerships and programmes shared by public entities.

Privatisation

The four case studies grouped under this model are detached for

their history and context, but are linked by the staff-related results.

In The Netherlands, the staff of the former *RIB* (Rijks Inkoop Bureau – State Procurement Office) were transferred to *NIC* (after the take-over), a private company. They therefore became private employees and were no longer deemed a part of the public sector.

Despite the scarcity of information on the matter, clearly, the subject of this paper had no decisive impact on the staff as such, or at least as far as direct and immediate consequences are concerned. In certain countries, e.g. in Denmark and in parts of France, the centralisation of public procurement is limited to the drawing up of framework agreements, whilst specific contracts are still entrusted to public agencies equipped with a "contracts office".

Therefore, the reduction of costs attributed to centralisation is not linked to the reduction of staff costs, but rather to the possibility of saving enormously thanks to the greater simplicity, timeliness, reliability and transparency of the transactions, especially within advanced e-procurement systems, such as those found in Finland.

From a different analytical perspective, determining the difficulties encountered by new private companies because of the organisational changes necessary is called for.

Dutch *NIC* has approximately 300 staff members working in the commercial office. There is also a contract management sector, with between 15 and 20 employees, who, on a daily basis, control and monitor all finalised contracts. Other staff members may be hired to control the execution of contracts.

One of the main problems of *NIC* was the call to better understand the needs of the client. Faced with these problems, *NIC* launched a re-organisation programme in an attempt to become more flexible. which was determined by the "public origins" of the company. The know-how and the skills of the staff and structure of the "originally public" company were not in line with the business philosophy characterising the new working conditions and management.

Contracting out
The problems of staff management resulting from Contracting out, included such factors as indefinite employment (as opposed to a specified work contract), the cultural reforms needed to tackle new work contexts, and the protection of the staff of the company losing the bid.

In England, likely staff management problems were ironed out during the contracting out process. The externalisation of the IT sector meant that approximately 2000 employees were transferred from the public *Information Technology Office* to the private *Electronic Data Systems (EDS)*. After intense negotiations with the Tax Office and Trade Unions and, on the basis of the laws protecting employees being transferred, *EDS* put together a programme called *Image*, which ensured the presence of the exact same working conditions of the public office in the new private agency. However, the agency was given the possibility to negotiate the terms and conditions of employment and to change, for the better, the work standards. Moreover, it was responsible for the subsidies and compensation set aside for those staff members not included in the transfer. The Labour Ministry, on its part, adopted measures for the protection of the personnel being transferred, with a series of action plans on the "new" working conditions.

Public corporatisation
In the countries where a central agency was created, no significant impact on the transfer of personnel was noted. In fact, it seems as though there is greater request for expansion than substitution.

In Ireland, the centralisation of procurement, headed by the *Government Supplies Agency* (GSA), occurred when the requests of a public agency could be satisfied. If the *GSA* was unable to organise the delivery of supplies, an agency could sign a personalised contract with specific requests. Hence, flexibility was guaranteed, meaning that staff members previously working in the public sector kept their jobs. On the other hand, the creation of a supplies agency was not an

entirely elementary process as regards the staff re-assignment policies. Even those staff members previously in charge of purchases were put through a rigorous training session to be able to competently apply the new supplying processes.

Unlike the Irish example, the creation of the Australian agency *OASITO* comprised the transfer of only one part of the staff (+- 65 members) of the Finance and Administration Departments. The plan to introduce new technology in public agencies was met with much resistance, because of the reigning know-how and skills of the staff: technological innovation means money has to be spent for the training of staff members and that a series of established routines and practices have to be dismissed.

Partnerships and Programmes

In this case, two differing institutional formats converge: partnerships and the programmes shared by public entities.

In Germany, the setting up of the platform for e-procurement was entrusted to public agencies, namely federal, regional and local, working together as partners. In Spain, *CIBASI* is an inter-ministerial commission in charge of the purchasing of technological goods and services. And lastly, *Contracts Canada* is headed by *Public Works and Government Services Canada* (PWGSC), which falls under the federal government.

In all of the examples cited above, there was no apparent impact on staff members, although the employment of new personnel, specialised in the modernisation of public agencies, and in particular that of the creation and management of the platform for e-commerce, did produce certain visible results.

Generally, more and more agencies are turning to outsiders for IT procurement, but this has not led to a reduction of public employees in the IT sector. In Spain, for example, the IT employees of the central public administration amounted to 11,774 on the 1st January, 2002, indicating a 1.9% increase as opposed to the previous year (11.546).

In the United States, the aim of the *Comm-PASS* project was not to reduce the number of staff members working in the procurement sector of agencies, but rather to streamline, as much as possible, the procurement procedures of the State of Massachusetts.

The aspects of staff management analysed by *Comm-PASS* highlighted the disparities in the skills and know-how of the staff working in the procurement sector of various agencies. *Comm-PASS* outlined a series of guidelines for the streamlining of staff behaviour. The primary initiator of the contract i.e. the administrator of the public agency, in direct contact with *Comm-PASS*, was most aware of the need to respect the uniformity of procedures. Therefore, the State of Massachusetts drew up a specific course for the preparation of its staff. The *Massachusetts Certified Public Purchasing Official* (MCPPO) aims at moulding exemplary human resources able to work in the public procurement sector. Each staff member attends a seminar, at the end of which he/she receives a diploma for *Public Purchasing Officials*. A Public Purchasing Official with the required professional experience, is eligible for MCPPO employment.

Conclusion

This analysis has focussed on the productivity of outsourcing, by examining the results and effects of the process.

The method of the analysis included an unpremeditated approach which aimed at analysing the performance of outsourcing in terms of the specific strategies applied in the centralisation of purchases and the externalisation of IT.

A far-sighted analysis of the results achieved, needs to focus on the following three aspects:

1. the productivity of services;
2. the quality and innovation of services;
3. the working conditions and professional development of the staff.

The efficiency of the services determines the financial requirements of the managers, price levels and consequently affects

the financial conditions of the public agencies that decide to externalise.

The analysis of the 16 countries shows the limits of a quantitative study of reductions in production or purchasing costs, primarily because of the many various factors that need to be considered to estimate cost reductions.

Despite these limits, the results of the study confirm the initial idea regarding the impact of externalisation models on the financial situation of agencies. These models can be beneficial if applied correctly and if the total cost of the services offered is taken into account. In all of the case studies, the "best practices" (for the services offered) foresaw the finding of solutions that would not only reduce "visible costs" (the actual purchasing costs), but more importantly, reduce "invisible costs" i.e. elevated transaction costs caused by limited reasoning, opportunism and uncertainty, that will become visible only after the contracts have been drawn up and work is already underway.

The quality and the innovation of the services offered refers to the approach towards the client and the ability to fulfil the expectations of the stakeholders in terms of "performance": the overall quality of the service, timeliness, availability, selection, information, security, integration and harmony.

The improvement of this performance aspect depends, first and foremost, on the ability to create a balanced set of incentives for managers. A determining factor, for all service types, is the setting up of effective quality control and evaluation systems that function before, during and after the service has been offered. The ability to negotiate clear-cut contracts and clearly define what is meant by "service requirements" is a basic prerequisite to protect the contracting party from the risks of non-performance.

The impact of externalisation policies on working conditions and professional development is not self-explanatory. Striking the right balance between the economic and social suitability of these choices is called for and can only be attained by means of a wide-

ranging approach and the definition of certain basic principles. The case studies also highlighted a number of best practices to be kept in mind: e.g. for the tackling of problems.

The best examples of externalisation show a high degree of staff awareness: the staff is in fact viewed as one of the key aspects to be taken into account when choosing the model.

The moments of uncertainty which may arise during these changes, lead to social tension and strong psychological pressure for individuals. Hence, the need for rapid, shared solutions and for keeping the staff informed of further developments.

Externalisation models influence the skills of the staff. This is particularly evident in examples of contracting out, where system governance requires, on behalf of the public agency, the re-examination of recruitment, training, career and incentives policies (policy analysis, strategic planning, contract planning, performance evaluation and strategic control). Moreover, the public agency is called upon to have a strong basis comprising technical know-how (both internal and external), so that evident information disparities do not worsen and become an opening for opportunistic behaviour by mangers, or so that elevated costs and quality deterioration are avoided.

Bibliography

1. Accademia Italiana di Economia Aziendale (1984), *Pubblica amministrazione: prospettive aziendali di analisi e di intervento*, Giuffre', Milano.
2. Agency for Public Management, *Framework Agreements for the Public Administration of ICT Services and Equipment and SME's: The Swedish Experience*. London Seminar, held on the 30th April, 2004.
3. Dunleavy, P., Hood C. (1994) "From Old Public Administration to New Public Management", in *Money and management*, 3, pp. 9-16.
4. European Commission (2004), "Electronic Public Procurement in EU Member States: Country Reviews." Extract of the Extended Impact Assessment Study: *Action Plan on Electronic Public*

Procurement, Part 1, Baseline Analysis, December 2004.
5. Gualmini, E. (2003), *L'amministrazione nelle democrazie contemporanee*, Laterza, Roma-Bari.
6. Kickert, W.J.M. (1997), (ed.), *Public Management and Administrative Reform in Western Europe*, Cheltenham, UK, Edward Elgar.
7. Kickert, W.J.M. e Klijn E.H. (1997), (a cura di), *Managing Complex Networks. Strategies for the Public Sector*, London, Sage.
8. Maltoni A. (2005), *Il conferimento di potestà pubbliche ai privati*, Torino, Giappichelli.
9. Ministerie van Economische Zaken (1999), *Actieplan Professioneel Inkopen en Aanbesteden*, Persbericht Ministerraad, 26 november 1999.
10. Osborne R. D., Gaebler Ted (1992), *Reinventing government: how the entrepreneurial spirit is transforming the public sector*, New York, Plume.
11. Paletta, A. (1999), *Assetti istituzionali ed economicita' dell'azienda pubblica*, Padova, Cedam.
12. Pollitt C., Bouckaert G. (2004), *Public Management Reform. A Comparative Analysis*, Oxford, Oxford University Press, 2^ Edition.
13. Capano, G. (2003), "Administrative Traditions: Italian Administrative Reforms during the 1990s", in: *Public Administration*, n. 3, 781-801.
14. PUMA (1997), *Contracting out Government Services: Best Practice Guidelines and Case Studies*, Public Management Occasional Papers No. 20, OECD/PUMA, Paris, 1997.
15. Rhodes, R.A.W. (1996), "The New Governance: Governing without Government", in: *Political Studies*, XLIV, pp. 652-667.
16. SIGMA (2000), *Centralized and Decentralized Public Procurement*, Paper No. 29.
17. Walsh K. (1995), *Public services and market mechanisms: competition, contracting and the new public management*, Basingstoke; London, Macmillan.
18. Williamson, O.E, (1975), *Markets and Hierarchies: Analysis and Antitrust Implications*, Free Press, New York.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

ROMANIAN SOCIAL POLICY IN THE EU ACCESSION PROCESS

Liliana Mihuț*

Résumé
L'article présente les principaux changements qui se sont produits dans quelques domaines de base de la politique sociale en Roumanie dans la processus d'intégration européenne. Sont relevés d'abord plusieurs repères de l'évolution de la politique sociale au niveau de l'UE, ainsi que dans les pays de l'Europe Centrale et de l'Est après 1989. L'analyse est centrée ensuite sur la réforme du système de retraite, de la protection des chômeurs, de l'assurance maladie et de l'assistance sociale en Roumanie. La conclusion essentielle est que le niveau des objectifs réalisés contenus dans le domaine social de l'acquis communautaire ne constitue pas un obstacle à l'adhésion.

Since 1989 remarkable changes have been occurred in the field of social policy in Romania as in all other Central and Eastern European (CEE) countries. These changes are specific attempts to solve the complex problems of the new economic and social realities in these countries and also to fulfil the requirements expressed by international or regional organizations. As Romania has assumed to be prepared for accession to the European Union (EU) by 2007 a major task of reforming social policy is to apply the Community *acquis* on this matter.

This paper seeks to highlight the changing framework in certain areas of social policy that are particularly relevant for the process of accession to the EU and where reforms have been occurred, namely the pension system, the protection against unemployment, health care, and also social assistance.

---

* **Liliana Mihuț** is Professor at the Department of Political Science, Faculty of Law, Babeş-Bolyai University.

European Social Policy in Progress

Although the "European social model" paradigm is mentioned in various official documents and in the literature as well the construction of this model is well behind that of a common market. According to some authors the distinctiveness of the EU in relation to other areas of the world consists not in a specific common social policy but "in the existence of mature welfare states among its members" (Guillén 2003, p. 5). Thanks to the principle of subsidiarity the policy making in the field of social policy remains to a great extent at the level of national governments.

The present state is a result of a sinuous evolution. Especially since the Second World War social policy has been developed in a very complex way, in terms of theoretical debates and also in terms of the concrete programs and measures adopted in various countries. After a consistent expansion in the 1960s, the "welfare state" - considered to be the best expression of social policy at that time - was characterized by many theorists and politicians as being in crisis in the late 1970s and in the 1980s. In the view of others, it was not a crisis proper but merely an intensification of the political dilemmas concerning the priorities, areas, levels, forms, and agents of social policy. Following these controversies many scholars prefer now terms like "mixed economy of welfare" or "welfare pluralism" in order to describe the roles various actors, namely the state, associations, communities, churches, families, as well as individuals play in social policy.

Variations in the policy responses of the countries to the social and economic challenges, in terms of social spending as a proportion of gross domestic product, social citizenship rights, or the public - private mix in welfare provisions, have had as a result various typologies of social policy. The classification made by Esping-Andersen, which refer to the liberal, conservative (corporatist) and social-democratic "welfare state regimes" (Esping-Andersen 1991) has been one of the most quoted, in spite of some critical remarks that it had to face. Also relevant are those typologies which take into

account various areas of Europe. Linda Hantrais, for example, emphasises the specific features of the three models of welfare state in the EU countries, namely: continental, Nordic and Anglo-Saxon, as well as Southern (Hantrais 1995). The inclusion of the last one, characterized by less advanced and less coherent social security systems is especially significant for the process of the EU enlargement. It has opened the perspective of taking into account the specific features of Central and Eastern European countries that have applied for acceding to the EU and some of them already are member states.

Despite this heterogeneity among welfare states the advancement of European integration has made possible the progress of European social policy. While the Treaty of Rome was focused mainly on the free movement of workers and the improvement of living and working conditions the Treaty of Maastricht and then the Treaty of Amsterdam and the Treaty of Nice marked important steps further. According to Article 136 of the Consolidated Version of the Treaty Establishing the European Community the objectives of social policy are not only the promotion of employment, improved living and working conditions, but also proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

The same document underlines the common responsibility of the Community and of the Member States, and mentions the role of European institutions in encouraging cooperation between states "excluding any harmonisation of the laws and regulations of the Member States" (Article 137, Article 140). But it doesn't exclude the assignment of explicit social policy competences to the European Union. As Leibfried and Pierson (2000) asserted, "National welfare states remain the primary institutions of European social policy, but they do so in the context of an increasing constraining multi-tiered polity". Other authors have stated the emergence of a "two-tiered system": a first tier, common to all EU member states, based on the

single market principle, regulated by EU directives, coupled with the aspirations promoted in the so-called "European social model", and a second tier, which is differentiated according to national peculiarities (Cerami 2005, pp. 186-187). As this multi-tiered or two-tiered system of policy-making is an emerging one a certain tension exists between intergovernmentalism and supranationalism. Pleading for the concept of "collective governance" as an alternative for the supranational – intergovernmental dichotomy Wallace (2000, p. 531) refers to the "deliberate ambiguity of this semi-confederation". It is to be underlined that this ambiguity has not been an obstacle for the progress of the common social policy but rather a stimulus.

Changing Social Policy in Central and Eastern European Countries

In the CEE countries social policy is undergoing dramatic changes, in an economic and social context characterized by many difficulties and problems. These are not only inherited from the former communist regimes, but also caused by the process of transition to the market economy. It is obvious that the Eastern enlargement of the EU has to address the acute social problems of countries where the living standards of many citizens are far below the Western European average.

Although at the beginning of the transition to the market economy countries chose different strategies of transition, namely "shock therapy" or gradual change, they have faced similar problems and have identified similar objectives and solutions on the field of social policy.

One of the most difficult problems has been that of unemployment. During the communist regime unemployment was not officially recognized, although it existed in hidden forms. In some countries of the region (as in the case of Romania) the legal provisions regarding unemployment benefits were adopted in the early 1990s for the first time. In order to face the complex

consequences of unemployment each country set up specific passive and active policies as well.

Other problems have been those regarding the pension system. Prior to 1989 the state was the main guarantor of a highly equalitarian pay-as-you-go scheme. Sooner or later in the 1990s all the countries started to reform the pension sector in order to face the consequences of the ageing of the population and also of the decreasing in economic activity. Most countries have already started to develop a private component of the pension scheme.

Reforming the health care systems has been another priority. In spite of assuring universal coverage the highly centralized former system proved to have major deficiencies especially regarding the financial resources and the quality of the services provided. Since 1989 all countries have made more or less successful structural changes in order to improve the financing system, to decentralize the administration, and to stimulate the establishment of market-based services.

Above all the most difficult challenge that CEE countries have to face is that of poverty and social exclusion. Social assistance has been revaluated in order to cope with raising unemployment and inflation so that to reduce the old and the new forms of poverty and their consequences. The social benefits having a marginal status in the former regime were replaced by complex social assistance schemes funded not only through the state budget, but also the local budgets and charity.

For all the CEE countries that applied for the EU membership the accession negotiations on social matters were focused on certain areas as they were stipulated in the Chapter 13, “Employment and Social Policy”, such as: labour law, equality of treatment between women and men, health and safety at work, employment, as well as social protection, social dialogue, public health (European Commission, Directorate-General Enlargement 2004, p. 45).

Beyond these common challenges and priorities each country has adopted specific solutions and rhythms of the changes.

Analysis of the social security schemes reveals significant differences in terms of coverage, source of funds, qualifying conditions, types of benefits, administrative organization etc (see Social Security Administration 2004). These differences proceed from the legacy bequeathed by each particular former regime, including those in the interwar period, and also from the different transition strategies and the stage achieved in the EU accession process. It is obvious that those CEE countries that already joined the EU are more advanced in the process of aligning their policy with the European common social agenda than those, like Romania, that have not concluded yet the preparations for accession.

Romania's Progress Towards Accession

Since 1989 Romania has been characterized by tendencies and changes in social policy similar to those proper to other CEE countries, but it has also displayed some specific features regarding the priorities, amplitude and rhythm. These features are a consequence of the political choices made by the domestic actors involved in the policy-making, and also of the specific requirements from the international organizations like the World Bank (WB) and the International Monetary Fund (IMF), and, increasingly more in the last decade, from the EU.

Social heritage had certain relevance as well. It is to be mentioned that the first laws regarding social security were adopted in Romania even before the First World War. As early as 1912 the law provisions covered the basic risks: old age, disability, death, sickness, maternity, work injuries, for certain categories of people. This system of social insurance that drew on the German model was developed after the Great Union of 1918. The social assistance also benefited by the support of the governmental institutions as well as of the philanthropical associations, religious groups and charitable individuals. In spite of certain shortcomings, such as the lack of protection of the unemployed and of the peasants, before the Second

World War Romania already had a complex and coherent social security system.

After the war, like other countries in the region, Romania developed a system of social policy based on the principle of full employment, as well as on the essential role of the state in providing social benefits (cash benefits or free-of charge services, such as education and health care). Excepting unemployment, all the other risks benefited by universal coverage, but at a very modest level. At the end of the 1980s the living standards of the population diminished substantially. It was one of the main reasons of the popular revolt that had as a result the overthrow of the former regime.

In the early 1990s social policy was focused on improving the low living standards bequeathed by the communist regime. Then, very soon, social policy had to compensate or to prevent the negative effects of the economic reform. One of the main strategic options that Romania made at the start of the transition was to diminish the role of the state not only in the economy, but also in various fields of public policy, including social policy. Beside the public sector the private one has been developed as well. Much more actors are involved now in an increasing complex process of policy-making. The main actors in making social policy decisions have been not only governmental institutions and political parties that are acting in a pluralist environment, but also trade unions. In search of a new identity, trade unions initially focused on the salary increase and the working conditions improvement, and then, as unemployment rose, on preserving jobs. In 1997 the Economic and Social Council was established in order to improve the social dialogue and negotiations among trade unions, employers' associations and the government. At the same time, on the basis of developing the collaboration between the local administration and the non-profit sector the capacity of the NGO to be involved in offering social services has been increased.

The decision taken by Romania to apply for EU membership (in 1995) has had an essential impact on the evolution of social

policy, as in all other fields of the policy-making. Following the opening of the accession negotiations (1999) Chapter 13, "Employment and social policy" was opened in 2001. The Position Paper stated that Romania accepts the entire community *acquis* on this matter without any transitional arrangements (Conference on accession 2001). The chapter was provisionally closed in 2002 and then closed in 2004, when the negotiations on the whole were concluded.

The complexity of the environment to which the social policy has to address in Romania is well characterized by the evolution of the **Human Development Index (HDI)**, the synthetic indicator used by the United Nations Development Programme (UNDP) in its global human development reports starting with 1990. After a small rise in the middle of the 1990s the HDI had a sinuous evolution in Romania in the second half of the decade, especially as a result of the economic difficulties. During the last four years the HDI has shown an increasing trend. The 2004 value is above the word average, but below the average for CEE countries and the Commonwealth of Independent States (CIS). While all the CEE countries that already are EU members are classified as high human development countries Romania and Bulgaria are ranked as medium human development countries. Taking into account the value of the three components of the HDI in 2004 it is to be noted that life expectancy at birth (71.2 years) is now higher than the world average (66.9 years) and higher than the average in the CEE and the CIS (69.5 years). Secondly, the educational component, that includes the adult literacy rate and the combined primary, secondary and tertiary gross enrolment ratio, is above the world average but below the CEE and CIS average. Third, the economic component still reveals the most difficult problems, as the Gross Domestic Product (GDP) per capita (US$6,560) is below the world average (US$7,804) and the average of the CEE and CIS (US$7,192). On the basis of this comparison the most recent National Human Development Report focuses on the regional disparities and

persistent poverty as the main critical issues for human development in Romania (UNDP in Romania 2005).

The actual system of social security includes the major programs, namely those dealing with: 1) old-age, disability and death; 2) sickness and maternity; 3) work injury; 4) unemployment; 5) family allowances (for international comparison see Social Security Administration 2004). As the aim of this paper is not to offer an exhaustive description or analysis of the social policy in Romania, but to highlight the most significant aspects, what follows is referring especially to certain fields of social insurance, namely old-age pension, protection against unemployment, health insurance, and also social assistance.

In spite of various improvements and attempts to reform dating from the 1990s the **pension system** has been substantially changed only since 2000. The main objectives of the reform have been the consolidation of the existing pay-as-you-go public scheme and the development of a three-pillar system. According to the Law no. 19/2000 concerning the public system of pensions and other social insurance benefits (enforced from April 2001) the main sources of funds are the contributions paid by the insured persons and the employers. Taking into account only the old-age pension it is worthy mentioning that the retirement age has been gradual increased between 2001 and 2014 from 62 to 65 years for men and from 57 to 60 years for women.

Although the public system has been reformed there are a few critical aspects that have accumulated in the recent years. The main concern is referring to the fact that the number of retirees exceeds the number of the contributors to the social insurance system mainly as a result of the population ageing, early retirement, and also of the decreasing economic activity and rising unemployment, in certain periods of the transition. At the same time, as the level of the contributions to the social insurance fund is pretty high some employers, especially big enterprises, have substantial debts in paying them and hence serious difficulties in providing the resources

of a system which is a pay-as-you-go one. Consequently the purchasing power for pensioners has dramatically diminished in spite of the periodically adjustment of the pensions to the inflation ratio. The current re-correlation process that aims at the correction of inequity among different categories and generations of pensioners has not resulted in a substantial increase of pensions (for a detailed analysis of these challenges see Vilnoiu and Abagiu 2003, pp. 53-78).

The pension system still needs solutions for ensuring its financial sustainability and for increasing the pensioners' incomes. In 2004, later than other countries in the region, Romania legislated the development of a multi-pillar system. According to the Law no. 411/2004 a mandatory private savings account scheme (a second pillar of the system) that will complement the public pension fund (the first pillar) will start to work in 2006. This privately managed system will be mandatory for all workers younger than age of 35 and optional for all others under the age of 45. Finally, the Law no. 249/2004 provided for the introduction of an employer-sponsored and privately administered occupational pension system (a third pillar) in 2005. However, having in view controversies regarding the private schemes (in Romania and elsewhere) it is obvious that they are not the only solution to the complex problems that the pension system has to face.

Protection against **unemployment** is a new issue for Romania, as for other CEE countries. By comparison with these countries the level of unemployment has not been very high. Analysis of the unemployment rate during the transition years reveals a sinuous evolution: from 3.0% in 1991 (the year when it was officially recognized) to a maximum of 11.8% in 1999 and then a decrease to 7.4% in 2003 (Comisia Nationala pentru Statistica 2004). Moreover, as various sources have revealed, many unemployed persons are engaged in "informal" activities. On the other hand, more and more Romanians are working abroad (legally or illegally employed).

However, the protection against unemployment is a major task for social policy as this phenomenon is an important source of

poverty and social exclusion. According to the first law adopted in Romania on this matter (1991) beneficiaries are not only people who have lost their job and are registered at a local labour office, but also the new job seekers having recently completed schooling or the military service. The unemployment benefit was paid for 270 days, and subsequently an unemployment allowance was payable for 18 months. A new law (Law no. 76/2002 concerning the system of unemployment insurance and incentives for employment) provides for an unemployment allowance granted for 6 to 12 months, differentiated by the contribution period. The unemployment benefit represents 75% of the minimum gross salary in the country or 50% for persons with no contribution period. The main sources of funds for the unemployment insurance system are contributions paid by the employers, employees and self-ensured. Beside the so-called "passive policy" the new legal provisions are much more focused on "active policy". The main active employment measures are as follows: job counselling, training and retraining programmes, recruitment incentives to employers, support to job creation and to business start-ups (for details see Vilnoiu and Abagiu 2003, pp. 95-98). Certain features of the unemployment in Romania, especially the high level of the long-term unemployment, prove that the proper balance between active and passive measures has not been reached yet.

The **health care** system has been also restructured in order to become more adequate to the new social and economic environment, to improve the quality of the services provided, and also to cope with the international standards. The health social insurance has benefited by a new legal framework thanks to the Law no. 145/1997. Having the German experience as a model, this law changed the financing mechanism of health care from the previous state budget financed system into an insurance system based on the contribution of the employer and the employee, supplemented by the subsidies paid from the state and local budgets. As the system covers the entire

population certain categories of people benefit from social insurance without paying a contribution.

Although the law is very generous in terms of provisions regarding a large scale of services for treating and preventing sickness in fact there are many problems in implementing these provisions. Actually the system is under-financed. As the main source of financing is the social health insurance fund it is to be mentioned that the number of the contributors to this fund is much smaller than that of the beneficiaries and the level of collecting the contributions from the employers is not high enough. Consequently the medical equipments are often insufficient and obsolete, the necessary medicines are not always available or have too high prices without an adequate compensation, the physicians salaries are quite low, and the quality of medical services is under the patients' needs and expectations.

It is obvious that Romania needs to allocate more for the health care system but it is also necessary to improve the cost-efficiency relationship. In order to reach this aim the policy makers have stimulated, among other ways, the participation of the private sector in the health system. It is expected that, by providing additional options, this sector will have a contribution to the increasing of the health care financing, as well as will improve the access to the medical services and their quality. The Law no. 212/2004 concerning health private insurance has set up such an additional option.

The improvement of the public health system is another priority for the health care policy of Romania in the EU accession process. The system has been reorganized in order to cope with the European and international standards in preventing diseases and promoting public health. The central and the local institutions are focused on the national health programs ad policies, preventive activities, health inspection etc. As the health status of the population is well below the EU average more efforts are necessary in order to improve it.

Not only the social insurance but also the **social assistance** has had a complex evolution in the last decades. Its role has been changed from the marginal one during the former regime to an important one in combating poverty and solving other social problems, like those that affect children under difficulty or disabled people.

Although **poverty and social exclusion** was not reflected in the official statistics prior to 1989 many Romanians faced this problem, since they had to cope with alimentary, fuel or energy shortages. During the transition years the poverty rate increased, as empirical evidence and numerous surveys and reports have revealed. In the early 1990s various international or national institutions and organizations published a large variety of estimations of the poverty, as a result of using different methods and techniques for evaluation. However, by the beginning of the new decade the capacity of Romanian institutions of dealing with this phenomenon had become more consistent. A significant progress has been made through the establishment of the Anti-Poverty and Social Inclusion Promotion Commission (Comisia Anti-Saracie si Promovare a Incluziunii Sociale – CASPIS) in 2001. With the support of the WB and the UNDP experts this commission elaborated a National Anti-Poverty and Social Inclusion Promotion Action Plan that was enacted by the government a year later. The plan outlines the strategic objectives and priorities and also a comprehensive methodology for poverty monitoring and assessment on the basis of the EU indicators of social exclusion. A comprehensive report on the trends of poverty from 1995 to 2003 elaborated by the CASPIS and the WB reveals that the poverty increased during the period of economic recession (1996 - 1999) reaching its peak in 2000, when the poverty rate was 35.9% and that of the severe poverty was 13.8%; then the rate decreased to 25.1% for poverty and 8.6% for severe poverty in 2003, in correlation with a better economic performance (Comisia Anti-Saracie si Promovare a Incluziunii Sociale 2005).

The action against poverty is a complex one, which refers to employment, education, health care, housing etc. Nevertheless social assistance has a specific role in combating poverty and social exclusion. Only at the beginning of the new millennium a coherent framework has been established thanks to the Law no. 705/2001 concerning the national system of social assistance. According to the law the social assistance consists of: 1) cash or in kind benefits (family allowances, social aid of the needy individuals or families, special social aid for disabled people); 2) social services that are allowed in special institutions or at home in a system organized by the state in partnership with the local community and civil society.

It is to be mentioned that the first income-support scheme was introduced in 1995 in the form of the social aid, as a means-tested benefit. In 2002 it was replaced by the minimum guaranteed income for the families and persons without or with very low income. This benefit is provided as a difference between the income of the respective family or person and the minimum income threshold established by law every year. It is means-tested and also employment conducive as the unemployed people who are able to work have to prove they are looking for a job and also they have to provide community work.

All these developments in the system of social assistance are arguments against diminishing its role to a residual safety net. As long as the economic performance is not good enough the social pressure will require extended provisions for covering the negative effects of the transition.

Evaluations and Conclusions

An evaluation of social policy in Romania in the EU accession process leads to certain conclusions, which are only partial, since the transformations are in progress. If in the early 1990s social policy was mainly an effect (or a reaction) to the economic policy, in the second half of that decade and especially in the new decade the substantial reforms have started in various sectors of this field. A major change

consists in the diminution of the role of the state in making social policy decisions and consequently the increasing of the trade unions and NGOs involvement in this field. In connection with the restriction of the public sector the private sector is developing. The financing of social policy has moved from general taxation to the social insurance system based on the contributions of the employers and the employees.

Having in view these findings it is difficult to categorize the social policy of today's Romania in terms of a conservative, a liberal or a social-democratic model. In the early 1990s Bob Deacon used Esping-Andersen's typology for the prospects of social policy in the CEE countries. In his view, the welfare state regime of Romania could be considered "post-communist conservative corporatism", especially because of the high levels of working class mobilization and also of the absolutist and authoritarian legacy (Deacon 1993, pp.195-197). It is true that the German model of social security (the well known example for the conservative-corporatist type) has influenced Romania at various moments of its history and also in the recent years. However, in spite of the trade union activism and the progress in social dialogue it is still hard to identify a real partnership among employees, employers, and the state. At the same time, in certain circumstances, as those produced by the famous miners' movements of the 1990s, the state seems to suffer not from too much authority, but, on the contrary, from a deficit of authority.

On the other hand, as universal coverage is proper to many social benefits, certain features of the social-democratic model are obvious. Finally, as more restrictive conditions have been adopted for certain social benefits and the private sector has been developed in various fields, some liberal tendencies could also be identified. Hence it seems more adequate to label social policy of Romania as being mixed or heterogeneous.

Actually, in spite of the national peculiarities, this mixture can be identified in other CEE countries as well. However, it is hard to demonstrate that a new model of welfare state is in progress in the

region. For example, it is questionable if the common features could be described in terms of the "emergence of a peculiar Eastern European model of solidarity" (Cerami 2005). In the case of Romania, although the principle of solidarity is often stipulated, including in the legislation regarding social issues, in fact the individualistic approach of these matters is more obvious, as many surveys have revealed. It is to be presumed that the development of the private sectors in various fields of social insurance will not be in favour of solidarity.

The main challenge for the social policy in Romania is to develop the capacity of becoming a part of the cooperation and coordination process in the EU, understood as a multi-tiered or a two-tiered system. The Chapter 13 ("Social policy and employment") of the 2005 European Commission's Comprehensive Monitoring Report on Romania concluded: "Romania is generally meeting the commitments and requirements arising from the accession negotiations in the areas of **equal treatment of women and men, health and safety at work, employment policy, social protection and anti-discrimination** and is expected to be in a position to implement this *acquis* from accession" (European Commission 2005, p. 55). In the context of the general evaluation, the same document stated that Romania needs to make increased efforts in certain areas, such as labour law, social dialogue, public health, the European Social Fund, and social inclusion, in order to complete its preparations for accession. However, it is significant that no issue of the social policy and employment area is included among those of serious concern. It is to be mentioned that, following the recommendations included in the 2004 Regular Report on Romania's progress towards accession, prolonged negotiations among trade unions, employers' organizations and Ministry of Labour, Social Solidarity and Family on amending the Labour Code took place for about six months in 2005. Finally the Code has been amended in order to bring it into line with the EU *acquis* in areas such as fixed-term contracts, dismissals and collective redundancies, working time

and training. On the other hand, these changes take into account certain requirements of the IMF for enhancing the flexibility of the labour market.

Having in view the mentioned statements of the European Commission and also the developments that this paper presented we can conclude that the overall assessment is a positive one. 1 January 2007 as a deadline for concluding the preparations for accession of Romania to the EU is not in danger because of the social policy issues. However, the distance - in certain respects, real gaps – existing between Romania and the EU member states in terms of the basic social indicators (as those involved in HDI) shows that increased efforts are still needed.

References

1. Cerami, A., 2005. *Social Policy in Central and Eastern Europe. The Emergence of a New European Model of Solidarity?* Thesis (PhD), Erfurt: Electronic Text Center der Universitäts-und Forschungbibliothek (Accessed 20 July 2005) [www.db-thueringen.de/servlets/DerivateServlet/Derivate-4495/cerami.pdf]
2. Comisia Anti – Saracie si Promovare a Incluziunii Sociale, 2005, "On Poverty", [Accessed 10 October 2005], [http://www.caspis.ro/pagini/en/despre_saracie.php]
3. Comisia Nationala pentru Statistica, 2004, *Romanian Statistical Yearbook – 2004.*
4. Commission of the European communities, 2004, *2004 Regular Report on Romania's progress towards accession.* {COM(2004) 657 final}. Brussels, 6. 10. [Accessed 1 November 2004] [http://europa.eu.int/comm/enlargement/report_2004/index.htm]
5. Conference on accession to the European Union – Romania, 2001, *Position Paper of Romania. Chapter 13 – Social Policy and Employment.* CONF-RO 21/01, Brussels, 14 June.
6. Deacon, B., 1993, "Developments in East European social policy", in: C. Jones, ed. *New perspectives on the welfare state in Europe,* London: Routledge.

7. Esping-Andersen, G., 1991. *The Three Worlds of Welfare Capitalism.* Cambridge: Polity Press.
8. European Commision Directorate-General Enlargement, 2004, *Enlargement of the European Union. Guide to the Negotiations. Chapter by Chapter*, [Accessed 30 June 2005], [http://europa.eu.int/comm/enlargement/negotiations/chapters/index.htm]
9. Guillen. A., 2003, "Researching the European social model from a comparative perspective", in: L. HANTRAIS, *Researching the European Social Model from a Comparative Perspective*. *Cross-National Research Papers 7 (1),* European Research Centre, Available from: [http://www.xnat.org.uk/] [Accessed 20 July 2005].
10. Hantrais, L., 1995, *Social Policy in the European Union,* Houndmills: Macmillan Press.
11. Liebfriend, S. and Pierson, P., 2000. "Social Policy", in*:* H. Wallace and W. Wallace, eds. *Policy-Making in the European Union,* Fourth Edition, Oxford: Oxford University Press.
12. Social Security Administration, 2004, *Social Security Programs Throughout the World: Europe, 2004.* Washington, DC: SSA Publication No 13-11801, September.
13. UNDP in Romania, 2005, "2003-2005 National Human Development Report for Romania", Bucuresti: *UNDP in Romania* – Publications, [Accessed 20 July 2005], [http://www.undp.ro/publications/nhdr03-04/index.php]
14. Vilnoiu, M. and Abagiu, C., 2003, *Study on the Social Protection Systems in the 13 Applicant Countries. Romania: Country Study*, Brussels: GVG. Study financed by the European Commission – Employment and Social Affairs DG, [Accessed 20 January 2004], [http://europa.eu.int/comm/employment_social/soc_prot/social/romania_final.pdf]
15. Wallace, W., 2000, "Collective Governance", in: H. Wallace and W. Wallace, eds. *Policy-Making in the European Union,* Fourth Edition. Oxford: Oxford University Press.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

LE RECOURS EN ANNULATION DES ACTES DE DROIT COMMUNAUTAIRE

Carmen Lazăr*

Abstract
The action in cancellation is a the judicial means that was used directly in front of the Community jurisdictions against the acts adopted by the Community institutions and bodies, in view of their annulment, if it is considered that they have been adopted in violation of superior provisions. The competence belongs to the Court of Justice if the claimant is a Member State or a Community institution, respectively to the Court of First Instance if the claimant is a natural person, a legal person or a third State.

C'est une voie judiciaire utilisée directement devant les juridictions des Communautés Européennes, à la différence du recours préliminaire qui suppose la solution du litige par les juridictions nationales. Il s'exerce contre les actes émis par les institutions et les organes communautaires, en vue de leur annulation, si on considère qu'ils ont été adoptés en violation des dispositions supérieures. La compétence appartient à la Cour de Justice si le requérant est un Etat ou une institution communautaire, respectivement au Tribunal de Première Instance si le requérant est une personne physique, une personne morale ou un Etat étranger. Le recours en annulation a le même rôle que le recours préliminaire en appréciation de validité, celui d'écarter les illégalités existantes dans l'ordre juridique communautaire, mais il est soumis à des conditions de délai et de légitimation active.

Son objet est constitué par:

a) les actes obligatoires émis par les institutions/les organes communautaires (le Conseil Ministériel; le Conseil Européen quand

* Carmen Lazăr is Assistant Professor at the Faculty of European Studies

il se réunit en tant que Conseil de chefs d'Etat ou de gouvernement, parce que dans ce cas il agit en tant que Conseil Ministériel[1]; la Commission; le Parlement; la Banque Centrale Européenne; la Cour des Comptes[2]; la Banque Européenne d'Investissements, dans ce cas le motif pouvant être seulement la violation des formes substantielles et requérants seulement la Commission ou les Etats membres), normatifs ou individuels, nommés ou innommés, respectivement atypiques

b) les actes obligatoires émis par les organes délégataires[3], sans tenir compte de l'origine de ceux-ci mais à la condition qu'on leur ait réellement délégué le pouvoir de décision, dans le cas contraire les actes étant inexistants et non pas annulables[4]

---

[1] S. Van Raepenbusch, "Droit institutionnel de l'Union Européenne et des Communautés Européennes", De Boeck Université, Bruxelles, 1998, p.491

[2] la légitimation passive de celle-ci résulte indirectement de la jurisprudence de la Cour, respectivement de l'Arrêt "Maurissen et Union Syndicale/Cour des Comptes" 193-194/87 de 11.05.1989 (la Cour s'est prononcée sur le fond du recours sans soulever expréssément le problème et sans qu'on le lui ait demandé), mais cette jurisprudence n'a plus été confirmée par le Traité sur l'Union Européenne, situation dans laquelle la question se pose si elle reste valable; dans le même sens voir Ph. Manin, "Les Communautés Européennes, l'Union Européenne", Ed. Pedone, Paris, 1998, p.374; S. Van Raepenbusch, op.cit., p.495; en sens opposé, avec l'argument que la logique continuerait d'imposer le contrôle sur les actes de la Cour des Comptes, voir J. Verhoeven, "Droit de la Communauté Européenne", Ed. Larcier, Louvain, 1996, p.284; un autre auteur nuance la solution, en affirmant que tant que la Cour des Comptes n'a pas un pouvoir de décision ses actes sont exclus, mais que si la situation en changeait le contrôle s'imposerait, comme les choses se sont passées avec le Parlement Européen aussi (voir J.P. Jacqué, "Droit institutionnel de l'Union Européenne", Dalloz, Paris, 2001, p.550)

[3] c'est-à-dire les organes auxquels diverses attributions ont été déléguées par les institutions communautaires, ces organes pouvant être publics, privés ou créés par les Communautés; n'est pas quand même légale que la délégation d'attributions de gestion ou d'administration, celle de pouvoir étant frappée de nullité

[4] J. Megret e.a., "Droit de la Communauté Economique Européenne", vol.10 "La Cour de Justice, les actes des institutions", tom 1, Ed. De l'Université de Bruxelles, Bruxelles, 1983, p.93 (les auteurs citent la jurisprudence de la Cour)

Un auteur soutient pourtant que les actes émis en vertu d'une délégation de pouvoir sont eux aussi annulables[5]. La discussion ne manque pas d'importance pratique, car elle aurait des conséquences sur le délai du recours, sur les effets de la décision et sur la compétence de la juridiction: l'inexistence peut être constatée par toute juridiction, donc aussi par les juridictions nationales, dans n'importe quel stade de la procédure et d'office aussi, tandis que la nullité appartient à la compétence exclusive des juridictions communautaires, peut être invoquée seulement dans le délai prévu (voir ultérieurement) et en principe par les destinataires de l'acte, la possibilité qu'elle soit invoquée d'office par le juge devant être expressément prévue[6]. On pourrait soutenir aussi que dans les deux hypothèses – la délégation et l'absence de la délégation – il s'agit de la nullité, car un motif de nullité est constitué par l'incompétence de l'auteur de l'acte; or, le traité ne distingue pas entre la situation dans laquelle l'auteur n'est pas compétent pour adopter cet acte et celle dans laquelle il n'est pas compétent du tout pour adopter des actes juridiques. A préciser que dans l'hypothèse de l'existence de la délégation c'est l'institution délégante qui est défenderesse et non

---

[5] voir dans M.Ch. Bergerès, "Contentieux communautaire", PUF, Paris, 1994, p.203 (l'auteur cite R. Joliet)

[6] dans le même sens voir aussi J. Verhoeven, op.cit., p.297-298; J.P. Jacqué, op.cit., p.547 (celui-ci soutient que l'inexistance ne peut pas être déclarée dans un recours en annulation, mais il ne dit pas quel type de recours devrait être introduit; si on admet qu'il a raison, se pose le problème de la compétence des juridictions communautaires, car celles-ci, à la différence des juridictions nationales, ne peuvent juger que les recours expressément prévus par les traités, ayant une compétence d'attribution et non pas une générale); la Cour s'est prononcée dans un seul cas, respectivement dans un recours en annulation, et dans le même sens avec l'auteur cité plus haut, c'est-à-dire qu'elle a constaté l'inexistance de l'acte et que par conséquent elle a rejeté le recours comme inadmissible (voir l'Arrêt "Société des usines à tubes de la Sarre" 1 et 14/57 de 10.12.1957); et le Tribunal a eu la même attitude (voir la Décision "BASF/Commission" 79, 84-86, 89, 91-92, 94, 96, 98, 102 et 104/27.02.1992)

pas l'organe délégataire, les actes de celui-ci étant équivalus aux actes de la première, une sorte de substitution ayant lieu[7].

c) les statuts des organes délégataires d'origine communautaire

Sont exclus donc les avis et les recommandations, les mesures administratives et d'organisation à caractère purement interne, les actes préparatoires[8], les actes confirmatifs[9]. Certains auteurs excluent aussi les actes inexistants, car ceux-ci ne peuvent produire pas même provisoirement un quelconque effet juridique[10]. La jurisprudence de la Cour a admis initialement les divers accords communautaires aussi et les actes des organes créés par les accords (voir l'Avis 1/75 de 11.11.1975), malgré la position opposée de la doctrine qui soutenait que pourraient éventuellement être attaqués les actes de conclusion des accords; actuellement quand même il paraît que l'orientation de la jurisprudence va dans le sens du contrôle uniquement des actes de conclusion des accords[11] (ce qui de toute façon exclut les actes des

---

[7] Ph. Manin, op.cit., p.374; D. Simon, "Le système juridique communautaire", PUF, Paris, 1998, p.359-360; J. Megret e.a., op.cit., vol.10 cit., tom 1 cit., p.90; Arrêt CJCE "S.N.U.P.A.T." 32-33/58 de 17.07.1958; Arrêt CJCE "Meroni" 9/56 de 13.06.1958

[8] il faut préciser pourtant que ceux-ci sont soumis au recours en annulation s'ils produisent des effets par eux-mêmes (donc définitifs), c'est-à-dire dans la situation dans laquelle ils mettent fin à une procédure distincte de la principale, ce qui suppose que cette dernière n'ait plus lieu (car, si elle a lieu, la première lui est accéssoire et l'acte préparatoire est absorbé dans l'acte décisoire, n.n.); voir S. Van Raepenbusch, op.cit., p.494; Arrêt CJCE "CIRFS/Commission" 313/90 de 24.03.1993

[9] dans le sens qu'ils ne peuvent pas être attaqués séparément, dans un délai qui coule depuis leur adoption; ils pourront pourtant être attaqués, soit séparément, soit ensemble avec les actes qu'ils confirment, dans le délai qui coule depuis l'adoption de ces derniers (voir l'Arrêt CJCE "Maurissen" cit.; J.P. Jacqué, op.cit., p.552)

[10] S. Van Raepenbusch, op.cit., p.495 et 507; J.P. Jacqué, op.cit., p.547; Décision T.P.I. "BASF/Commission" cit.; Arrêt CJCE "Commission/BASF" pourvoi 137/92 de 15.06.1994

[11] Arrêt CJCE "France/Commission" 327/91 de 9.08.1994 (cet arrêt n'est pas toutefois particulièrement significatif, car le recours a été dirigé aussi contre l'accord lui-même, pour des motifs distincts de ceux qui regardaient l'acte de conclusion, et la Cour ne s'est plus prononcée aussi sur eux puisqu'elle a annulé

organes créés par les accords, car ceux-ci n'ont pas besoin d'autres formalités postérieurement à leur adoption, n.n.).

Le Parlement n'était pas initialement prévu parmi les institutions dont les actes peuvent être attaqués, parce que les traités constitutifs ne lui accordaient qu'un rôle consultatif; cette situation est devenu pourtant inconcevable pour une Communauté de droit après que le Parlement eut obtenu des pouvoirs en matière budgétaire, ce qui a déterminé la Cour de considérer comme admissibles des recours dirigés contre ses actes, si ces actes produisent des effets juridiques vis-à-vis des tiers; la première fois elle l'a fait concernant une résolution (acte en principe politique, mais qui peut avoir aussi une valeur juridique, en fonction des circonstances)[12]. Le Traité sur l'Union Européenne a mis fin aux éventuelles controverses, en conférant expressément au Parlement légitimation passive, en même temps avec l'extension de ses pouvoirs. En ce qui concerne la Cour des Comptes, comme nous l'avons déjà montré le Traité ne contient aucune disposition, ce qui soulève des questions sur la jurisprudence mentionnée de la Cour.

En tenant compte de l'extrême diversité des actes innommés, dont les uns ont un caractère politique et d'autres juridique, en fonction de l'intention de leurs auteurs de s'engager juridiquement, la Cour ne prend pas en compte l'appellation et la forme d'un acte

---

l'acte de conclusion pour l'incompétence de l'institution auteur; donc, on ne peut pas savoir si elle aurait considéré ou non comme admissibles aussi les griefs contre l'accord, n.n.); Arrêt CJCE "Allemagne/Conseil" 122/95 de 10.03.1998; J.P: Jacqué, op.cit., p.549 (certainement, cela n'élimine pas les problèmes, car même si ce qui constitue l'objet du contrôle et de l'annulation est l'acte de conclusion et non pas l'accord comme tel, en fait le contrôle portera sur ce dernier s'il vise des aspects de contenu; comme l'auteur cité plus haut le montre, il reste que les Communauté trouvent ultérieurement une solution conforme au droit international, en coopération avec le tiers partenaire à l'accord, n.n.)

[12] voir l'Arrêt "Luxembourg/Parlement Européen" 230/81 de 10.02.1983; il y a eu quand même des auteurs qui ont considéré qu'on ne peut pas combler une lacune de ce genre par voie jurisprudentielle mais seulement par la révision des traités (voir J. Megret e.a., op.cit., vol.10 cit., tom 1 cit., p.91-92)

pour apprécier son caractère juridique et obligatoire, mais analyse son contenu, ses effets et ses objectifs; en définitive, tout acte destiné à produire et qui produit des effets vis-à-vis des tiers est soumis à ce type de recours[13]. D'autre part, pour empêcher les Etats de se réunir en conférence intergouvernementale au sein du Conseil dans de domaines de compétence communautaire, quand ils adoptent des accords sous forme de décisions du Conseil mais ayant le régime des accords, la Cour procède à la requalification de tels accords en de décisions du Conseil, donc susceptibles d'être annulés; ainsi, la fréquence de telles réunions dans de domaines communautaires a beaucoup diminué[14].

En ce qui concerne les requérants, ils se divisent en deux catégories: les requérants privilégiés – les Etats membres et les institutions communautaires – et les requérants ordinaires – les particuliers (les personnes physiques et morales[15]) et les Etats étrangers. Aux premiers il n'est pas demandé un intérêt à agir, car ils sont présumés de défendre la légalité communautaire, mais la Banque Centrale Européenne et la Cour des Comptes sont limitées à la sauvegarde de leurs prérogatives; dans le cas des Etats n'est pas importante la position qu'ils ont prise lors de l'adoption de l'acte attaqué[16]; il est à préciser que par "Etat" on entend seulement le pouvoir central, non pas le pouvoir local aussi[17]. La légitimation active du Parlement n'était pas prévue elle non plus dans les traités constitutifs mais, par une interprétation constructive de leurs dispositions (fondée sur le principe de l'equilibre institutionnel) et

---

[13] M.Ch. Bergerès, op.cit., p.205-206; Ph. Manin, op.cit., p.374-375

[14] Ph. Manin, op.cit., p.373; D. Simon, op.cit., p.358; J.P. Jacqué, op.cit., p.549-550

[15] la notion de personne morale est entendue en sens large, en incluant aussi les collectivités locales, de même que les structures associatives sans personnalité juridiques mais qui jouissent d'une autonomie suffisante pour agir dans les rapports juridiques comme des entités indépendantes (voir l'Arrêt CJCE "Gibraltar/Conseil" 298/89 de 29.06.1993; Arrêt CJCE "Union syndicale" 175/73 de 8.10.1974; J.P. Jacqué, op.cit., p.554)

[16] Arrêt CJCE "Italie/Conseil" 166/78 de 12.07.1979

[17] G. Isaac, "Droit communautaire général", Ed. Armand Colin, Paris, 2000, p.262

par le recours au parallélisme entre la légitimation active et la légitimation passive, la Cour a établi que le Parlement peut être requérant dans un recours en annulation, à condition pourtant qu'il tende uniquement à la sauvegarde de ses prérogatives[18]. Le Traité sur l'Union Européenne a consacré cette jurisprudence, mais le Traité de Nice a attribué au Parlement la qualité de requérant privilégié sans la condition mentionnée plus haut, comme il en était normal.

Aux requérants ordinaires il est demandé un intérêt (matériel ou moral[19], personnel, actuel et présent à tout moment du procès) et, en plus, ils ne peuvent attaquer que les actes individuels qui leur sont destinés, les actes individuels destinés – réellement ou apparemment – à autrui mais les concernant directement et individuellement, ainsi que les actes apparemment généraux qui les concernent directement et individuellement (en fait, l'intérêt est distinct seulement dans les actes destinés au requérant, car dans ceux qui le concernent directement et individuellement il est absorbé par cette exigeance, chose logique[20]). Toutefois, la jurisprudence plus récente semble encline à admettre aussi les recours introduits par diverses structures associatives dans l'intérêt de leurs membres sans qu'elles disposent d'un mandat en ce sens[21].

Quant aux notions d'intérêt direct et personnel, il faut dire qu'elles ont été contournées par la jurisprudence de la Cour, qui d'ailleurs a connu et connaît des oscillations au sujet de certains aspects; son interprétation est d'habitude restrictive, exceptant les cas dans lesquels le requérant a été associé, en vertu des dispositions légales, aux procédures qui ont conduit à l'adoption de l'acte (cas dans lesquels on présume que l'acte le concerne directement et individuellement). Ainsi, un acte concerne directement le requérant

---

[18] Arrêt CJCE "Parlement/Conseil" 70/88 de 22.05.1990; M.Ch. Bergerès, op.cit., p.209-211

[19] par exemple éviter à l'avenir l'illégalité en question (voir J.P. Jacqué, op.cit., p.553 et 555)

[20] dans le même sens voir S. Van Raepenbusch, op.cit., p.505

[21] J. Verhoeven, op.cit., p.282

quand il a sur lui le même effet que celui qu'il aurait si le requérant était son destinataire, c'est-à-dire quand il affecte directement sa situation juridique. Suivant cette définition, il a été décidé initialement que remplissent la condition mentionnée seulement les actes qui ne nécessitent pas d'actes d'application ou qui imposent des actes d'application automatiques, sans possibilité d'appréciation de la part des destinataires (par exemple les décisions par lesquelles on interdit aux Etats de faire quelque chose ou par lesquelles on leur refuse l'autorisation de faire quelque chose)[22]; sont donc exclus les actes qui permettent une application discrétionnaire de la part des Etats ou des institutions (par exemple les décisions par lesquelles les Etats sont autorisés, on leur permet de faire quelque chose, dans ce cas le destinataire pouvant donner ou non cours à l'autorisation[23]); en allant plus loin, on a considéré que ni le réfus de permettre à un Etat de faire quelque chose ne remplit la condition de l'intérêt direct, puisque l'Etat peut agir au mépris du refus et assumer les conséquences d'une telle conduite[24]; cette interprétation nous semble quand même exagérée, à son lumière aucun acte ne concernerait plus directement le requérant, toute compétence liée pouvant être transgressée! La jurisprudence plus récente considère toutefois que même dans le cas d'une autorisation de faire quelque chose l'acte qui la contient peut concerner directement le requérant, si le contenu de la mesure allant être prise par le destinataire de l'acte doit être conforme à l'autorisation reçue; autrement dit, la condition n'est pas remplie seulement si le destinataire de l'acte a un pouvoir discrétionnaire sous tous les aspects; bien plus, même quand le pouvoir discrétionnaire n'existe pas en fait (à cause du contexte économico-social ou de la volonté indubitable du destinataire de l'autorisation de lui donner cours, par exemple), bien qu'il existe

[22] Arrêt CJCE "Les affaires des roulements à bille japonais" 113 et 118-121/77 de 29.03.1979; J. Steiner, "Textbook on EC Law", Blackstone Press Ltd., Londra, 1995, p.361
[23] Arrêt CJCE "SA Alcan Aluminium Raeren e.a./Commission" 69/69 de 16.06.1970
[24] J. Steiner, ibidem

formellement, on considère que l'acte concerne directement le requérant[25]. La condition de l'intérêt direct est considérée remplie aussi quand une personne morale agit pour ses divisions dépourvues de personnalité morale et affectées effectivement par l'acte, ainsi que quand une société mère agit pour ses filiales destinataires de l'acte ou affectées effectivement par lui, dans ce dernier cas seulement si elle exerce un contrôle économique réel. L'intérêt direct ne se confond pas toutefois, dans l'opinion de certains auteurs, avec l'effet direct[26].

Un acte concerne individuellement le requérant quand il l'affecte en vertu des qualités qui lui sont propres ou d'une situation de fait qui le caractérise par rapport à d'autres et qui l'individualise comme s'il était le destinataire de l'acte[27]. A titre d'exemples de la pratique de la Cour nous mentionnons les mesures qui affectent soit un groupe fermé (les mesures rétroactives le sont par excellence), soit uniquement une seule personne qui, objectivement, ne peut plus être rejointe par d'autres (c'est-à-dire dans la situation de laquelle ne

[25] Arrêt CJCE "Werner A. Bock/Commission" 62/70 de 23.11.1971; Arrêt CJCE "Piraiki-Patraiki/Commission" 11/82 de 17.01.1985; Arrêt CJCE pourvoi "Dreyfus" 386/96 de 5.05.1998; Arrêt CJCE pourvoi "Compagnie Continentale" 391/96 de 5.05.1998; Arrêt CJCE pourvoi "Glencore Grain" 403 et 404/96 de 5.05.1998; J. Steiner, op.cit., p.361-362; S. Van Raepenbusch, op.cit., p.508

[26] J. Megret e.a., op.cit., vol.10 cit., tom 1 cit., p.116; en sens contraire voir J. Tillotson, "European Community Law: text, cases and materials", Cavendish Publishing Limited, Londra, 1996, p.433-434

[27] quant à la situation spécifique du requérant il faut préciser qu'initialement la Cour ne prenait en considération cet aspect que si l'auteur de l'acte l'avait pris à son tour en compte, c'est-à-dire s'il avait adopté l'acte en sachant bien que celui-ci affecterait exprès le requérant; actuellement, pourtant, dans certains de ces arrêts la Cour vérifie seulement l'existance de la situation spécifique, indépendamment des prévisions de l'auteur de l'acte, pour tirer la conclusion que l'acte concerne individuellement le requérant (voir l'Arrêt CJCE "Extramet/Conseil" 358/89 de 16.05.1991; Arrêt CJCE "Codorniu/Conseil" 309/89 de 18.05.1994); cette orientation ne peut pas toutefois être généralisée, pendant la même période étant prononcés aussi des arrêts qui s'inscrivent dans l'orientation traditionnelle (voir S. Van Raepenbusch, op.cit., p.501)

peuvent plus se trouver d'autres), les mesures qui mettent fin à une procédure initiée par le requérant, des mesures anti-dumping (notamment quand le dumping est établi sur la base des prix pratiqués par le requérant)[28].

En ce qui concerne la condition que l'acte général en discussion soit seulement apparemment général, c'est-à-dire qu'il soit en fait un acte individuel, initialement elle était analysée en priorité par la Cour et si celle-ci arrivait à la conclusion que cette condition n'est pas remplie elle n'analysait plus les deux autres[29]. Contrairement à ce que soutient un auteur[30], la jurisprudence ne restreignait pas ainsi de manière injustifiée l'accès des particuliers au prétoire puisqu'elle était conforme aux dispositions des traités (on pourrait soutenir éventuellement que ces dernières sont superflues, car c'est seulement un acte individuel qui peut concerner individuellement un particulier et non pas aussi un acte général, mais c'est une autre question, *nn*). L'orientation actuelle de la Cour est quand même de renoncer à cette troisième condition, en analysant seulement les deux autres[31]. A propos de la nature apparemment générale d'un acte la jurisprudence de la Cour retient quatre hypothèses[32]:

- celle dans laquelle un acte a dans son intégralité une nature individuelle, en pouvant être assimilé à une décision, cas dans lequel la Cour procède à sa disqualification

- celle dans laquelle certaines des dispositions de l'acte ont une nature normative et d'autres une nature individuelle, cas dans lequel la Cour procède à leur dissociation

[28] J. Steiner, op.cit., p.363-366

[29] idem, p.358-361

[30] idem, p.358

[31] Arrêt CJCE "Allied Corporation/Commission" 239 et 275/82 de 21.02.1984; Arrêt CJCE "Extramet/Conseil" 358/89 cit.; Arrêt CJCE "Codorniu/Conseil" 309/89 cit.; J. Steiner, op.cit., p.359-360

[32] voir dans D. Simon, op.cit., p.345-346

- celle dans laquelle l'acte est dans son intégralité un faisceau d'actes individuels (donc de décisions), cas dans lequel la Cour procède à leur dislocation

- celle dans laquelle la même disposition peut avoir un caractère normatif pour certains et individuel pour d'autres (la théorie de la hybridité[33], quant à laquelle la jurisprudence de la Cour a évolué dans le temps depuis son rejet jusqu'à son acceptation)

En principe le problème regarde uniquement les règlements et les décisions, car les directives doivent être transposées dans les législations nationales (ce qui leur confère un caractère hybride, c'est-à-dire tant normatif qu'individuel[34]), cela signifiant que ce sont seulement les actes de transposition qui peuvent affecter directement les particuliers; toutefois, comme certaines directives peuvent produire elles aussi un effet direct, dans de telles situations elles sont susceptibles de concerner directement et individuellement les requérants particuliers[35].

Le recours ne peut viser que la légalité d'un acte et non pas l'appréciation de la situation de fait ou l'opportunité de l'adoption d'un acte; par exception, il peut viser des actes affectés d'un détournement de pouvoir (contrôle d'opportunité), des actes dans lesquels l'appréciation de l'institution s'est basée sur des faits inexacts ou inexistants, des actes dans lesquels cette appréciation est manifestement erronée bien qu'elle se soit basée sur des faits existants et exacts, enfin des actes dans lesquels les moyens pour

---

[33] que certains auteurs considèrent comme inacceptable du point de vue théorique, voir J. Megret e.a., op.cit., vol.10 cit., tom 1 cit., p.106-107; J. Verhoeven, op.cit., p.282

[34] pour la caractérisation des directives en ce sens voir notamment D. Simon, "La directive européenne", Dalloz, Paris, 1997

[35] Décision T.P.I. "Salamander AG e.a./Conseil et Parlement" 172 et 175-177/98 de 27.06.2000 (toutefois, même en présence de l'effet direct d'une directive, reste le problème – que le Tribunal a soulevé – que l'ancien art.173 du Traité C.E. mentionne expréssément seulement les décisions et les réglements adoptés sous l'apparence des décisions, cela justement parce qu'en principe les directives ne produisent pas d'effet direct, n.n.); J.P. Jacqué, op.cit., p.560

atteindre le but sont disproportionnés ou inadéquats, inaptes par rapport à lui (contrôle d'opportunité)[36]. Dans ces cas nous avons affaire à ce qu'on appelle "le contrôle minimum du juge" sur le droit d'appréciation des institutions.

Les motifs de nullité prévus par les traités sont les suivants:

a) l'incompétence[37]

Il s'agit tant de veille qui est absolue (externe), qui se rapporte à la répartition des compétences entre les Communautés et les Etats, que de celle qui est relative (interne), qui se rapporte à la répartition des compétences entre les institutions communautaires, dans les deux hypothèses elle pouvant étre matérielle, territoriale ou temporelle (ce dernier cas représente soit une variante de l'incompétence absolue, quand les Communautés agissent avant d'avoir expiré le délai de transition prévu par les traités ou quand les Etats agissent après être devenus incompétents, soit une variante de l'incompétence relative, quand une institution agit avant le commencement ou après l'expiration de son mandat).

Certains auteurs sont d'avis que l'incompétence absolue entraîne l'inexistence de l'acte, ce qui résulte aussi de la jurisprudence de la Cour[38].

---

[36] M.Ch. Bergerès, op.cit., p.221-223; D. Simon, "Le système juridique communautaire"cit., p.358-359

[37] certains auteurs équivalent l'incompétence et le choix erroné de la base juridique (voir J. Steiner, op.cit., p.370; Lasok & Bridge, "Law and institutions of the European Union", Butterworths, Londra, 1994, p.263; ce dernier auteur cite un arrêt de la Cour, "Grande Bretagne/Conseil" 68/86 de 23.02.1988, mais celui-ci est irrelevant car le choix erroné de la base juridique – laquelle n'a pas retenue en l'espèce – n'aurait même pas entraîné l'incompétence du Conseil, c'étant toujours lui celui qui aurait eu le droit d'adopter l'acte en vertu de la disposition prétendûment correcte, n.n.); d'ailleurs ni la requérante elle-même n'a invoqué l'incompétence, ni la Cour n'a assimilé le choix erroné de la base juridique à l'incompétence; une base juridique erronée peut impliquer l'incompétence, mais elle peut impliquer aussi d'autres motifs de nullité; il est vrai que la confusion est maintenue aussi par le langage utilisé par la Cour elle-même, dans lequel on trouve souvent le terme de "compétence" dans de telles situations sans qu'on retienne pourtant dans le dispositif la nullité de l'acte pour ce motif

b) les violations des formes substantielles

Il s'agit de la violation des règles prescrites ou que s'est imposées l'institution même pour l'adoption d'un acte, par exemple l'authentification de l'acte (l'existence de la date et de la signature du président de l'institution), la mention de la base juridique, la mention des propositions préalables, la mention de la consultation de divers organes, la motivation, la procédure de vote, l'obligation d'entendre la personne contre laquelle on envisage de prendre une sanction etc.[39]; en revanche, la non-notification ou la notification irrégulière, la non-publication ou la publication irrégulière n'entraînent que son inopposabilité, c'est-à-dire l'impossibilité de son application[40] (curieusement, un arrêt récent considère ces cas comme des motifs de nullité ou d'inexistence![41]).

c) la violation du droit communautaire, plus précisément la violation des règles matérielles des dispositions supérieures

---

[38] M.Ch. Bergerès, op.cit., p.215-216 (l'auteur cite G. Vandersanden et A. Barav); J. Moussé, "Le contentieux des organisations internationales et de l'Union Européenne", Ed. Bruylant, Bruxelles, 1997, p.427; Arrêt CJCE "Commission/France" 6 et 11/69 de 10.12.1969 (même s'il est prononcé dans un recours contre les Etats); Arrêt CJCE "Commission/Grèce" 226/87 de 30.06.1988 (idem)

[39] certains auteurs (J.P. Jacqué, op.cit., p.565) soutiennent que, dans la situation dans laquelle il protège l'équilibre institutionnel et non pas les droits des particuliers, ce motif entraîne la nullité de l'acte seulement s'il est déterminant, c'est-à-dire si l'acte avait eu un autre contenu au cas où les formes prescrites auraient été respectées; ils se fondent en ce sens sur la jurisprudence de la Cour (voir l'Arrêt CJCE "Van Landewyck/Commission" 209-215 et 218/78 de 29.10.1980; mais l'arrêt mentionné se réfère à une forme prescrite pour la protection des droits des particuliers et pas du tout à l'une prescrite pour la protection de l'équilibre institutionnel, respectivement à la communication envers des tiers, pendant une enquête ayant comme objet la violation du droit de la concurrence, d'informations qualifiées de "secret professionnel"! sous cet aspect l'arrêt est criticable, car le respect des procédures est très important dans un régime de droit, n'ayant aucune relevance le fait qu'il aurait été ou non déterminant pour le contenu de l'acte, n.n.)

[40] J. Moussé, op.cit., p.430; D. Simon, op.cit., p.354

[41] Arrêt CJCE pourvoi "Hoechst" 227/92 de 8.07.1999

Dans la notion de droit communautaire entre dans ce cas le droit originaire, le droit dérivé supérieur à l'acte attaqué, les accords des Communautés avec des tiers et les actes des organes créés par les accords, les accords conclus par les Etats antérieurement à la fondation des Communautés ou à l'adhésion à celles-ci, s'ils sont encore en vigueur (il s'agit de ceux auxquels les Communautés n'ont pas succédé aux Etats), tous les principes généraux du droit consacrés par la jurisprudence[42]. Ce motif de nullité vise l'absence de toute base légale, l'erreur sur la base légale applicable, la non-conformité de l'acte à l'acte supérieur, l'application erronée de ce dernier. Ici aussi l'idée se confirme qu'une illégalité grave et évidente semble entraîner l'inexistence de l'acte.

d) le détournement (l'abus) de pouvoir

Il signifie la poursuite d'objectifs différents de ceux qui sont prévus par les traités (ici entre aussi le détournement de procédure, c'est-à-dire l'utilisation d'une base juridique erronée afin d'éviter la procédure qui aurait été normalement applicable), l'absence d'un intérêt public ou la présence d'un erroné, la dissimulation de mobiles inacceptables derrière les objectifs exposés (s'ils ont joué un rôle déterminant dans l'adoption de l'acte). Ce motif se rencontre dans le cas du pouvoir discrétionnaire.

---

[42] certains auteurs ont inclus dans le bloc de la légalité communautaire aussi les accords entre les Etats membres, au moins ceux qui complètent les traités (soit qu'ils interviennent ou non dans de domaines communautaires), voir dans J. Megret e.a., op.cit., vol.10 cit., tom 1 cit., p.134-135; cet auteur est pourtant de l'opinion contraire (opinion à laquelle nous nous rallierons aussi), ces accords ne faisant pas partie du droit communautaire proprement-dit; le même auteur affirme que, bien que les arrêts de la Cour en matière d'annulation (et les décisions du Tribunal aussi, n.n.) aient une autorité générale (en ce sens que l'acte est comme abrogé, voir ultérieurement, n.n.), ils ne font pas partie du bloc de la légalité communautaire, c'est-à-dire qu'ils ne lient pas d'autres institutions que celle qui a émis l'acte annulé, leur non-respect n'étant pas donc une cause de nullité par lui-même, car il n'est pas prévu par la lettre des traités (voir J. Megret e.a., op.cit., vol.10 cit., tom 1 cit., p.141)

Les deux premiers motifs peuvent être soulevés aussi d'office par le juge.

Le délai d'introduction du recours est de deux mois depuis la publication, la notification ou la prise de connaissance de l'acte, selon le cas. Il n'est pas pourtant demandé un délai pour les actes inexistants, car ceux-ci sont considérés comme intolérables pour l'ordre juridique communautaire[43].

Même si l'acte attaqué est retiré par l'institution auteur en cours de procédure ou qu'il cesse de produire des effets, le recours peut continuer à être jugé s'il existe un intérêt pour le requérant (par exemple l'intérêt d'éviter la répétition de l'illégalité dans d' actes similaires)[44]. D'autre part, si l'acte attaqué est remplacé en cours de procédure avec un autre également annulable, pour les mêmes vices ou pour d'autres, il n'est pas nécessaire l'introduction d'un nouveau recours contre ce dernier acte[45].

En ce qui concerne l'autorité des décisions[46] de la Cour, respectivement du Tribunal, la décision qui annule totalement ou partiellement un acte général a une autorité absolue ou générale, l'acte étant comme abrogé. Quant à celle qui annule un acte individuel, certains considèrent qu'elle a une autorité relative (c'est-à-dire limitée au destinataire de l'acte, qui par définition est partie au procès), comme l'acte même; toutefois, les choses ne sont pas si simples que cela car, d'une part, le même acte individuel peut avoir plusieurs destinataires ou, comme nous avons vu, il peut concerner directement aussi d'autres que son (ses) destinataire(s), et d'autre part sur la base de cet acte ont pu naître des rapports juridiques civils (au sens large) et donc il a pu produire indirectement des effets aussi

---

[43] Ph. Manin, op.cit., p.386

[44] Ordonnance T.P.I. "Langdon/Commission" 22/96 de 16.12.1996; J.P. Jacqué, op.cit., p.548

[45] Ordonnance T.P.I. "Langdon/Commission" cit.; Arrêt CJCE "Alpha Steel/Commission" 14/81 de 3.03.1982; J.P. Jacqué, ibidem

[46] qui s'appellent en fait "arrêts"; pour simplifier la phrase nous avons utilisé le terme générique de "décisions"

sur d'autres; la question est si dans une telle situation l'annulation aura des effets aussi envers les destinataires qui n'ont pas attaqué l'acte, respectivement envers les tiers que l'acte concerne directement ou indirectement et qui ne l'ont pas attaqué, ou non?[47] En cas de réponse affirmative une telle autorité est donc absolue. La décision qui rejet un tel recours a une autorité variable, en fonction du motif du rejet; par exemple, si le recours est rejeté comme non fondé, donc parce qu l'acte est trouvé légal, la décision aura toujours une autorité générale mais seulement dans les limites des motifs invoqués[48], ce qui est logique; l'acte pourra être contesté pour d'autres motifs, par le même requérant ou par d'autres, dans le cadre d'un autre recours en annulation (hypothèse purement théorique, à cause des délais courts) ou d'une autre voie (par exemple l'exception d'illégalité, le recours préliminaire en appréciation de validité).

L'annulation se produit en principe rétroactivement, les traités donnant toutefois à la juridiction le droit de décider que certains des effets d'un règlement restent valables, afin de protéger les droits acquis de bonne foi sur la base de ce règlement; de même, elle peut permettre l'application d'un règlement jusqu'à l'adoption d'un

[47] la Cour n'a eu l'occasion de se prononcer que sur l'hypothèse – totalement différente – des actes identiques ou similaires à celui qui a été attaqué, soit qu'ils soient antérieurs, concomittants ou subséquents, en statuant que l'annulation d'un acte individuel ne s'étend pas aussi sur d'autres si leurs destinataires ne les ont pas attaqués, l'institution auteur n'étant pas obligée d'examiner leur légalité (voir l'Arrêt CJCE pourvoi "Assi Döman" 310/97 de 14.09.1999); dans le même sens voir S. Van Raepenbusch, op.cit., p.515

[48] certains auteurs soutiennent qu'il s'agit d'une autorité relative justement parce qu'elle est dans les limites des motifs invoqués (voir G. Isaac, op.cit., p.262; D. Simon, op.cit., p.359); mais l'autorité d'une décision n'est pas en rapport avec cet aspect mais avec la sphère des personnes auxquelles cette décision s'applique: si elle est opposable seulement aux parties, il s'agit d'une autorité relative, si elle est opposable à tous, ne serait-ce que dans les limites des motifs invoqués, on peut affirmer que l'autorité est absolue ou générale, n.n.

nouveau, valable[49]. La Cour a étendu ces dispositions aux directives aussi (à celles ayant un évident caractère normatif) et même au budget (qui s'adopte par une décision)[50]. La limitation de la rétroactivité de l'annulation n'opère plus pourtant pour les actes inexistants, ceux-ci étant, comme on a déjà vu, intolérables pour l'ordre juridique communautaire[51]. L'institution émettrice de l'acte annulé est obligée de l'écarter de l'ordre juridique, d'en faire de même avec les actes d'application et ceux de confirmation de l'acte annulé – dans ces deux derniers cas, en respectant les conditions de révocation des actes individuels -, d'éviter dans l'acte destiné à remplacer l'acte annulé le motif d'illégalité constaté, et dans le cas des actes généraux elle est obligée d'abroger tous les actes antérieurs et postérieurs intervenus dans la même matière et annulables pour les mêmes motifs; elle a aussi l'obligation de réparer le préjudice causé au requérant, ainsi que, éventuellement, celle d'adopter un acte nouveau, légal. Bien que, théoriquement, la juridiction ne peut pas adresser des injonctions en ce sens, la Cour a l'habitude de donner certaines indications sur les mesures qu'implique l'exécution de ses arrêts[52]. Un acte annulé pour la violation des formes prescrites peut être refait dans leurs respect, éventuellement à effet rétroactif.

Bibliographie

1. Bergerès, M.-Ch., *"Contentieux communautaire"*, PUF, Paris, 1994
2. Boulouis, J., *"Droit institutionnel de l'Union Européenne"*, Ed. Montchrestien, Paris, 1995
3. Isaac, G., *"Droit communautaire général"*, Ed. Armand Colin, Paris, 2000

---

[49] J. Molinier, "Droit du contentieux européen", Paris, LGDJ, 1996, p.99-100; J. Boulouis, "Droit institutionnel de l'Union Européenne", Ed. Montchrestien, Paris, 1995, p.340; D. Simon, op.cit., p.360

[50] J. Moussé, op.cit., p.448-449

[51] Arrêt CJCE "Astéris" 97/86 de 26.04.1988; J. Boulouis, op.cit., p.340

[52] M.Ch. Bergerès, op.cit., p.224-225; J.-M. Favret, op.cit., p.370

4. Jacqué, J.-P., *“Droit institutionnel de l’Union Européenne”*, Dalloz, Paris, 2001
5. Lasok, D., Bridge, J.W., *“Law and institutions of the European Union”*, Butterworths, Londra, 1994
6. Manin, Ph., *“Les Communautés Européennes, l’Union Européenne”*, Ed. Pedone, Paris, 1998
7. Mathijsen, P.S.R.F., *“A guide to European Union Law”*, Ed. Sweet & Maxwell, Londra, 1995
8. Megret, J. şa.a., "Droit de la Communauté Economique Européenne”, vol.10. *“La Cour de Justice, les actes des institutions”*, tom 1 şi 2, Ed. De l’Université de Bruxelles, Bruxelles, 1983
9. Moussé, J., *“Le contentieux des organisations internationales et de l’Union Européenne”*, Ed. Bruylant, Bruxelles, 1997
10. van Raepenbusch, S., *“Droit institutionnel de l’Union Européenne et des Communautés Européennes”*, De Boeck Université, Bruxelles, 1998
11. Simon, D., *“La directive européenne”*, Dalloz, Paris, 1997
12. Simon, D., *“Le système juridique communautaire”*, PUF, Paris, 1998
13. Steiner, J., *“Textbook on EC Law”*, Blackstone Press Ltd., Londra, 1995
14. Tillotson, J., *“European Community Law: text, cases and materials”*, Cavendish Publishing Limited, Londra, 1996
15. Verhoeven, J., *“Droit de la Communauté Européenne”*, Ed. Larcier, Louvain, 1996

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

URBAN POLICIES AND ARCHITECTURAL HERITAGE: CONCRETE EXAMPLES, REAL SCENARIOS AND CITIES NETWORKS IN THE AREA OF SE EUROPE

Eleni G. Gavra*

Abstract

L'Europe de Sud Est –particulièrement la région Balkanique- est pleine d'un héritage culturel et architectural (urbain et rural, aussi). La plupart des ces régions peuvent être caractérises comme des lieux avec «intérêt commune» ou «lieux d'identité relative». En notamment dans le cadre des politiques régionaux urbaines, ces régions ont aussi, la possibilité d'un développement plus vaste (interrégionale ou internationale).

L'article, sauf de restitution des exemples concrets, c'est un effort d'analyse -philosophique, historique, géographique, méthodologique- des manières ou des moyens, avec que les similarités ou les différences dans quelques régions –en ce cas la région Balkanique- peuvent être le prétexte pour une intégration spatiale.

As a Preamble

The paper is placed among the general frame of management and enhancement of the "common areas" or "related locales"[1] and "parallel ways" or "courses of cultural synergy" for the wider area of the Balkans.

In other words, it is an attempt towards the philosophical, historical, geographical and methodological analysis of the way, or ways, in which the differences and similarities of some areas, belonging to a wider territorial environment, in this instance the Balkan Peninsula, could constitute the prospects for common development and spatial integration.

* Lecturer of Balkan Studies Department, University of West Macedonia, Florina, Greece

Some points – as observations / conclusions - from the implementation of concrete examples or particular ventures, as I believe, will give the necessary interpretations of the views that I will develop, and hopefully conclude in a starting point for deeper discussions as well as further common efforts.

1. The first one applied on a Greek urban centre –Thessaloniki- in the framework of EU urban policies, linked with the revitalization and enhancement of historic centres and funded by the ERDF (Article 10) in 1992-94,
2. The second, applied on a central area of the historic city of Bucharest, in 1995-96, in the framework of Greek-Romanian scientific collaboration and
3. The third one, in 2000-01, on the East coast of Euxinos Pontus/ Black Sea, also as an applied example of cooperation between Greece and Romania too.

Framework of EU urban policies and implementation under specific guidelines

Urban Pilot Projects

As the world has entered a decade within which the majority of the world's population will live in urban areas, the 'right to the city' for the world's 3.5 billion urbanites has never been a more contested political, social and geopolitical issue[2].

Last decades many cities in the European Union are confronted with serious economic, social and environmental problems, even in the more prosperous regions.

In recent years, the Commission has focused increasing attention at Community level on the problems of cities. Since around 80 per cent on the EU population lives in urban areas, EU policies had a direct or indirect impact on cities, although the Treaties did not give the Commission an explicit mandate to develop an urban policy, until 1994.[3] Urban Pilot Projects were not intended as a comprehensive means of tackling these wide-ranging problems. In this period 1989-1994, the Commission did not consider that it

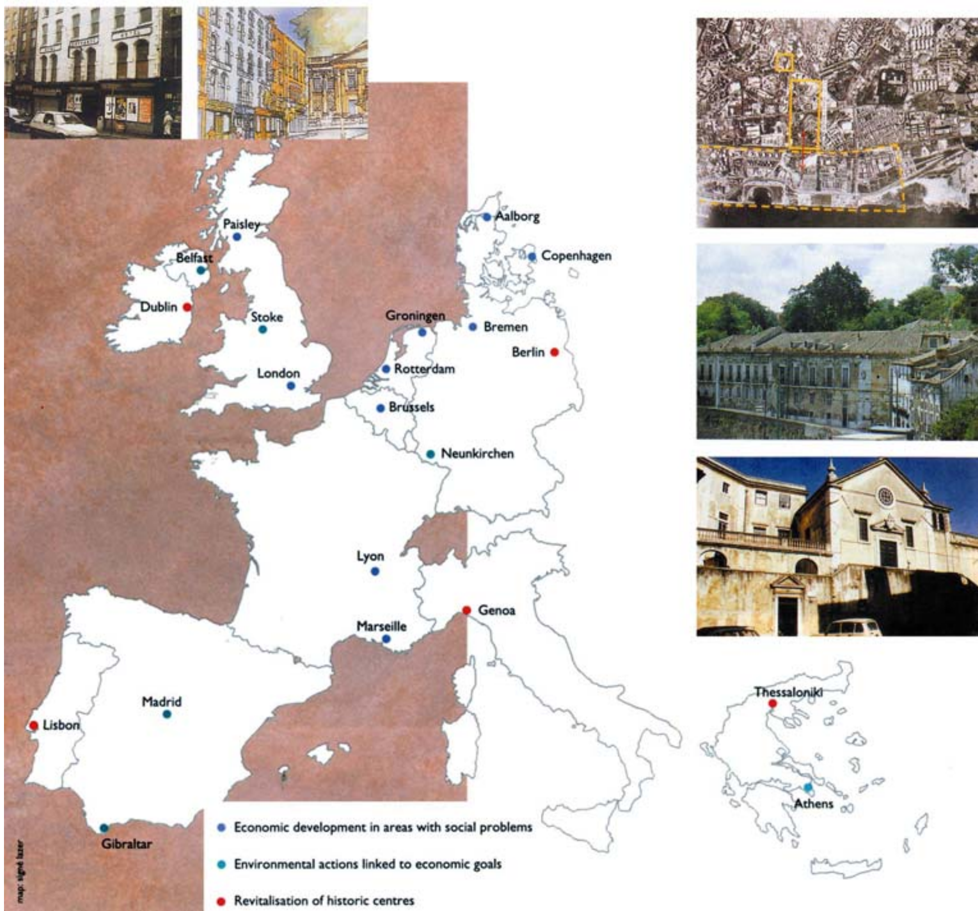
should tackle all the problems and issues of urban areas and that most actions were more appropriately carried out by the Member States and cities themselves, in line with the principle of subsidiarity [4].

However, it was felt there were common issues affecting cities in different parts of the Union and that a useful role could be played through direct EC involvement in highlighting best practice, promoting innovation and encouraging the diffusion and exchange of experience between cities.

For the period 1989-1993, the ERDF[5] contributed a total of around 100 million ECU for 32 pilot projects involving an overall budget of over 200 million ECU. Some of the main principles for cities and Member States were that projects should address an urban theme of European interest, be innovatory in character and have clear demonstration potential so that lessons could transferred to other cities[6]. Those 32 projects have been focused on four general urban themes (ph.1):

- Economic development in areas with social problems
- Environmental action linked to economic goals
- Revitalization of historic centers
- Exploitation of technological assets of cities

Especially, the projects to revitalize historic city centers typically combined building conservation with measures to enhance the use of historic buildings, thereby generating jobs. In Lisbon, a decaying quarter has been revitalized through new cultural and business facilities close to an area of deprivation. In the old Temple Bar district of Dublin, the urban pilot project has helped to develop a new film centre, craft centre, galleries and studios. In Thessaloniki, a new pedestrian axis has planned and built to encourage the qualitative development of the historic profile of the city. Also, it has created new links between the harbor area and the historic city commercial centre.



1. EU Urban Pilot Projects, Article 10 ERDF

The main aim of the interim and final progress reports -of those urban pilot projects- was to pass on to all those dealing with urban development issues the lessons learned so far from that experimental programme of 32 urban pilot projects. The Commission used this rich source of experience and best practice to further develop its own actions for the cities and urban regions of the Union. The type of measures included in this experimental programme of 32 Urban Pilot Projects constituted a source of inspiration for the development of the new programmes under the URBAN Initiative, one year later.

Thessaloniki's Urban Pilot Project: renewal and enhancement of the historic commercial centre

On October 1991, the Region of Central Macedonia-Greece had the intention to submit to the EU (DG XVI) a proposal for the revitalization and enhancement of Thessaloniki's historic commercial centre[7]. The area of reference, historic commercial centre of Thessaloniki, incorporated a large part of the contemporary market area, as well as the ancient Roman Forum area and important buildings-monuments of different historical periods of the city (roman, byzantine, ottoman, etc), connecting both the commercial functions and historic character (ph. 2, 3, 4). The central area of Thessaloniki, during the post war period, –as the most nodal urban areas of the country- suffered a big concentration of population and recourses. In consequence, problems as the degradation of buildings, incompatible land uses, poor transport infrastructure and pedestrian routes and a lack of linkage between the centre and recently developed commercial areas, appeared as an expected result of this phenomenon.

On the intervention area of Thessaloniki's pilot project, a number of direct actions had been taken in pursuit of the plan. Most important were:

- A traffic study of the wider area of the project,

- Implementation studies of zones sharing common characteristics ("Ladadika" -Oil and cereals Market, "Louloudadika"-Flower Market, "Bezesteni"–Textile and Gold Jewel Market, "Agios Minas" Church and wider area, Old Stock Market area),
- Funding for renewal and rehabilitation of important buildings,
- Plans for an archaeological promenade connecting the traditional commercial city centre and the ancient Roman Forum,
- Enhancement and reuse of the ancient forum for contemporary uses,
- Planning and creation- implementation of a European cities network for the exchange of know-how and experiences on the domain of urban policies.

2. Thessaloniki's Pilot Project. Intervention area

3. Thessaloniki: the Old Stock Market area

4. Thessaloniki: characteristic central zones

Additionally it was recognized that long term strategic planning –with an emphasis on upgrading and enhancement of public space- and feasibility studies had been required, in relation to innovative actions and services in the tertiary sector. The management of the project assured successful implementation of the plans through its rational structure.

The process of this Urban Pilot Project changed the direction of planning in Thessaloniki, producing a better public awareness of the functions and importance of the urban fabric of the city, too. Also, it offered a model to other European cities of the ways in which

historic elements of city architecture can be incorporated into the modernization of cities facing similar problems of urban decay and degradation (ph.5, 6, 7).

5. Thessaloniki: ancient Roman Forum – Cryptoporticus

6. Thessaloniki: Ladadika area

7. Thessaloniki's Pilot Project: upgrading of public space

Urban policies networks on the Balkan area

In continuity of Thessaloniki's Pilot Project and especially the implementation of a network on the domain of urban policies, we tried successfully –interalia- two concrete examples of cooperation on the Balkan area.

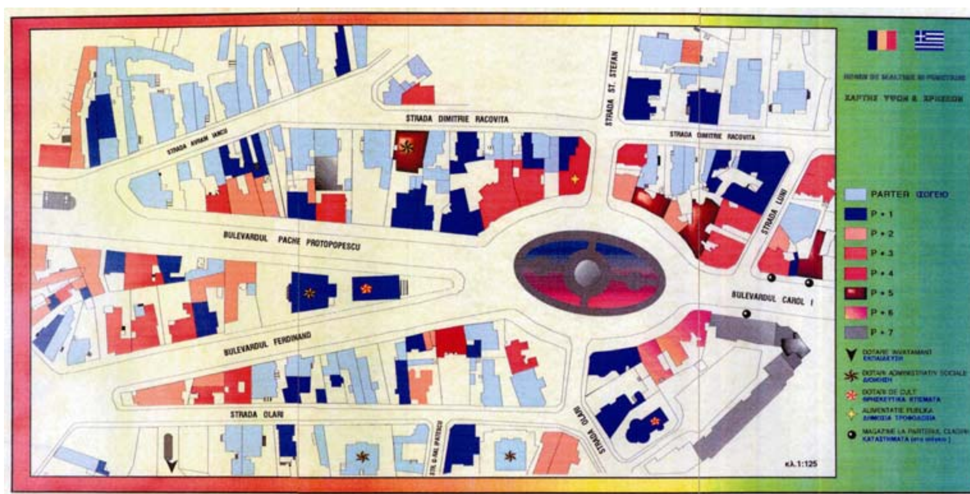
The first one of the above mentioned applications was a specific case of Greek – Romanian cooperation in the framework of European integration, on the direction of management, enhancement and development of urban cultural heritage. It was focused-established on a central area of Bucharest and especially on the region of the Greek embassy.

The second one was another specific case of intercultural cooperation, between Greece and Romania[8], as a real scenario for implementation in particular «related locales»; in this case on the wider area of Danube estuary on the Black Sea.

Greek-Romanian cooperation on the domain of urban policies: enhancement of the Hellenic embassy wider area in Bucharest

The relative area concerns one of the most central regions in Bucharest, with buildings of low structure and some characteristic buildings dating back to the end of the eighteenth century and the beginning of the twentieth century. They possess timeless morphological and architectural value as they represent all the types of buildings constructed for two centuries in Bucharest.

The centre of this area constitutes the building "island" where the church of the Greek community and the Greek Embassy can be found. Both buildings are the property of the Greek Foreign Office and were built at the same time at the beginning of the nineteenth century (ph.8, 9).



8. Bucharest. Intervention area

9. Bucharest: the church of the Greek Embassy

This region is located in a prominent position in the centre of the Romanian capital, linked with the historical centre of the city, an area of strong and constant Greek presence in modern history. Also, this group of buildings blends its existence within its immediate neighbourhood, as well as with other buildings, both the property of Greek community and of architectural interest.

The aim of the initiative, under the general thematic of "Greek-Romanian cooperation on the issue of management of architectural heritage" was the creation and establishment -between the two parties- of a wider network of continuous exchange of experience and knowledge in common fields of interest for the technical world of both countries. The realisation of such a network would be the provision and the creation of an observatory for urban policies for the two interested parties (Greece-Romania). From the two countries involving parties were the Technical Chamber of Greece/ Department of Central Macedonia, forming a joint work group of architects with the supporting of the Union of Romanian Architects.

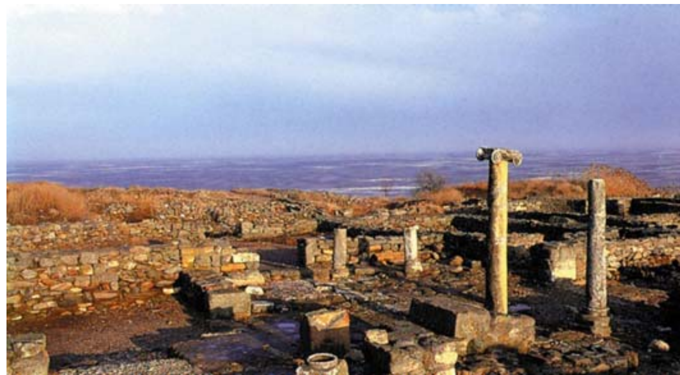
The target of the cooperation group was to plot and survey the wider area of the former Greek embassy and to compile the restoration (of equal interest to both parties) specifications required for the declaration of the international architectural heritage program, as an architectural and urban planning bilateral competition.

As the main targets of this common effort we can mention the following:

- enhancement of open public area
- proposals for the traffic regulation of the area
- restoration of the facades (for a specific group of buildings)
- re-use of the buildings of the Greek embassy and church, and configurations in their immediate and wider area
- creation of a starting point –as an observatory - for the Greek cultural and business interest in Romania.

Intercultural cooperation between Greece and Romania, on the wider area of Danube estuary on the Black Sea: the DAC-ISTRIA program

The DAC–ISTRIA program[9] constituted a pilot project for defining and analysing the composition of land components of the cultural and physical environment in relation to the bringing out of the common elements ("related locales"), seeking for the international and inter-regional co-operation in the broader area of South East Europe, emphasizing on the Balkans and more specifically on the area of the Black Sea around the estuary of Danube river and further more (ph.10, 11, 12). In this program the two involved parties (Greek and Romanian, as well) have tried to determine innovative methods of integrated intervention and enhancement on places with common characteristics (meaning "related locales").



10. Istria: the archaeological site

11. Danube

12. Braila

The geographical area of the program was defined by the Danube River and Delta in the North, the Black Sea seashore in the East, an imaginary line between Histria (Istria) and Harsova (Carsium) in the South and the Danube River (Harsova, Braila, Galatsi) in the West. Referring as urban centers, the south limit of the area was Constantza, the centre was Tulcea and the west limits were the eastern parts of Braila and Galatsi.

The project was realized under specific phases and actions:

- Historical "tracking" of the design and execution
- Designing of model interventions in the landscape (both cultural and natural).

This project could be the motive for the design and the creation of an International Forum for the co-ordination and the supervision of the implementation of the actions according to the standards of other international agents. Also, it was clarified that the action itself could be the starting point of other similar actions in geographical continuity - proximity in the Black Sea area or in the hinterland of both continents (e.g. along the flow of the Danube or at the tracks of the terrestrial part of the silk route).

The anticipated results of this effort could be:

- Acceptance and institution of joint policies on inter-state level involving the management of the natural environment, in combination with the man-made environment, for the field of reference of the program and more generally
- Conservation of cultural identity of a broader region
- Enhancement and promotion of elements linking cultures on both sides of the water
- Pilot interventions to monuments situated along historic routes on transborder areas
- Creation of common walking trails
- Planning, design and implementation of new pilot installations (for tourism, exhibitions, etc.) compatible in form and scale with the natural landscape.

Characteristics, possibilities and perspectives on the domain of management and enhancement of cultural heritage in the Balkan area

The area of SE Europe, mainly the Balkan peninsula, is characterized by a big variety of cultural reserves (thematic and historical). Urban centers of different scale, also broader areas -urban as well as rural regions- present a multi-cultural character. Elements of civilizations of different historical periods (pre-historic or classical ancient Greek, Roman, Byzantine, Venetian, Ottoman) and of important religious waves (Orthodox and western Christian, Muslim, Jewish), as well as of more modern architectural influences and schools (eclecticism, international style), are sparsely found in all the countries although not always in the same density[10].

The prevalence in the broader area and for a long period of big historic dynasties-empires (Roman, Byzantine, Ottoman) created the phenomenon of the "related locales" (places with common characteristics) or of the "zones of cultural synergy".

The institutional administrative framework of cultural heritage of these countries-despite the fact that it complies with the general guidelines and international protection and conservation legislation (see UNESCO, ICOMOS, ICCROM, Council of Europe, Article 128 of the Treaty of Rome etc.), when it becomes specialised in a national or regional level (in the area of reference) includes the danger of divergence and different management. Similarly, the different methodologies followed today in these countries in relation to the documentation and registration of the monuments which are part of the historical, architectural, archaeological and monumental heritage are also a cause of weakness for spatial integration.

The variations that exists from one country to the other in the structure and function of the relative agents, which are responsible for the issues of cultural heritage protection and administration (state organisations of national and regional range) in combination with the different methods of application and monitoring of the

institutional protection framework, definitely lead in a different management of similar issues per region.

However, despite the variations at the level of management related to the institutional framework and the methodology for coping with issues of protection of monumental richness, the area presents the image of a unified cultural space, without particular variations in monumental identity ("related locales"). This point of homogeneity offers today a series of opportunities-possibilities of international co-operation in the domains of research-analysis, protection and administration of cultural heritage. The restoration and reuse of the cultural reserve could constitute important revenue for the tourist industry, which demonstrates an incremental interest in special forms of tourism, in the SE Europe countries (cultural tourism).

In order to apply the policy guidelines, a feasible operational approach, might include a first segregation in zones of various historical periods: Greek, Roman, Byzantine, Venetian, Ottoman. The specific area can also accept other types of thematic distinctions per region. As corresponding distinctions we refer to:

- the poles of Orthodoxy-routes of religion and culture: e.g. Moldova and Walachia, western Bulgaria, Black Sea, Serbia, Mount Athos and northern Greek area
- the interesting ecosystems (along the waterfront)- in combination with the cultural reserve-such as the Delta areas of Evros, Nestos, Danube, the coasts of the Black Sea, the Dalmatian coasts, the Butrinti etc
- the trade and culture routes: city centres-as spaces of commerce and civilisation-with references to buildings of relative functions, e.g. markets, inns, bezesteni, etc.

Some potential scenarios for realization could be:

- *The Danube as 'border' and route of commerce and civilisation*
- *Land routes of commerce and civilisation-routes and junctions of the Balkans*
- *The Black Sea as a passage of commerce and basin of civilisations*

- *The route of silk-junction of East and West*
- *Natural ecosystems and cultural heritage in Central and SE Europe: landscapes protected by UNESCO*
- *Rural space-traditional settlements in the Balkans and the Black sea*

Each scenario might be realized through a whole series of actions, which could be considered as specific case studies depending. A precondition for success is of course the securing of financial support of the operational planning in such a way as to secure a realistic basis for activities. The participation of the private sector is considered to be necessary during the realization and any planning options should have as starting point the (financial) repayment of the activities.

As an epilogue

The area of reference -SE Europe and especially the Balkan area- has a great cultural and architectural potential either in urban or in rural scale. Most of those heritage areas could be characterized as locales of "common interest" or "related locales" and could be the starting point for a wider development (on the inter-regional or inter-national level).

Every successful effort- implementation, should have the following steps:

1. The establishment of "common (bilateral) interest" points.
2. The "knowledge" and "acceptance" of spatial similarities and diversities.
3. The "wedding" of powers-possibilities and interests on the scientific, politic and economic level.

Notes

[1.] First publication in: Gavra E. 2000. Strategic priorities of spatial development: protection and enhancement of cultural heritage. In G. Kafkalas ed. *European Space and Territorial Integration Alternatives: spatial development strategies and policy integration for the South - East*

Europe – ESTIA, Volume of the Report of the Research Project, pp. 63-68, 95-101

[2.] Politics-State-Space research group. 2005. Department of Geography, University of Durham, U.K.

[3.] On the 2.03.1994 the Commission adopted a proposal for a Community Initiative in the field of urban policy – European Commission. 2003. *Partnership with the Cities-The URBAN Community Initiative*, Luxembourg: European Union–Regional policy. Publications Office

[4.] European Commission. 1992. *Urban Pilot Projects*, Luxemburg: Directorate General XVI for Regional Policies. Office for official publications of the European Communities

[5.] ERDF: European Regional Development Fund

[6.] Interim report of Urban Pilot Projects, in: European Commission. 1992. *Urban Pilot Project.* Luxemburg: Directorate General XVI for Regional Policies. Office for official publications of the European Communities

[7.] Proposal was approved on 1991 and realization of Thessaloniki's Pilot Project started from 1992. This project was financed by the EU with 5.5 mil ECU, as 75% of the total budget

[8.] Especially between (1) from Greece: Aristotle University of Thessaloniki – Faculty of Architecture and (2) from Romania: Ion Mincu University and Prodomus Institute

[9.] *Spatial components of cultural and natural heritage: the case of Istria on the Danube estuary area – DAC.ISTRIA*, Aristotle University of Thessaloniki, Ion Mincu University of Bucharest, Prodomus Institute, financed by DAC/OECD, 2000

[10.] Gavra E. 2000. In *ESTIA*. Volume of the Report of the Research Project, pp. 63-68, 95-101.

References

1. Agenda Committee. 1999. *Stability Pact for South Eastern Europe*, Work plan

2. Cholevas, N. 1994. (In Greek). *Architecture Between the Wars in the Balkans*. Athens: Philippotis
3. European Commission. 1992. *Urban Pilot Projects.* Luxemburg: Directorate General XVI for Regional Policies. Office for official publications of the European Communities
4. European Commission. 1999. *European Spatial Development Perspective (ESDP) – Towards Balanced and Sustainable Development of the Territory of the EU*, Potsdam
5. European Commission. 2003. *Partnership with the Cities - The URBAN Community Initiative.* Luxembourg: European Union – Regional policy Publications Office
6. Gavra E. 2000. Strategic priorities of spatial development: protection and enhancement of cultural heritage. In G. Kafkalas ed. *European Space and Territorial Integration Alternatives: spatial development strategies and policy integration for the South-East Europe – ESTIA.* Volume of the Report of the Research Project, pp. 63-68, 95-101
7. Gavra E. 2000. Spatial components of cultural and natural heritage: the case of Istria on the Danube estuary area. In E. Andrikopoulou ed. *DAC-ISTRIA proceedings: final project meeting*. Aristotle University of Thessaloniki, Ion Mincu University of Bucharest, Prodomus Institute. DAC/OECD. Volume of the Report of the Research Project, pp.1-10, 41-54
8. Region of Central Macedonia. 1992. *Thessaloniki's Urban Pilot Project: Enhancement and Renewal of the Historic Commercial Centre.* Business Plan-Proposal for financing. Thessaloniki
9. Technical Chamber of Greece-Department of Central Macedonia and Union of Romanian Architects.1988. *Renewal and Enhancement of a central urban area in Bucharest.* Prescriptions for international architectural competition-Proposal for financing. Thessaloniki
10. Williams, R. 1973. *The Country and the City.* New York: Oxford University Press.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

TRANSLATION AS CROSS-CULTURAL TRANSFER

Sarolta Simigné Fenyő[*]

Abstract

Die Übersetzung bedeutet nicht nur zwischen Sprachen, sondern auch zwischen Kulturen ein Transfer. Aus diesem Grunde soll der Übersetzer auch über Kenntnisse über die Geschichte und Kultur der Ausgangssprache und der Zielsprache verfügen. Dieser Beitrag besteht aus einem theoretischen und einem praktischen Teil. Im theoretischen Teil wird ein Überblick über die Standpunkte der Fachliteratur in Bezug auf die Beziehung zwischen Sprache und Kultur gegeben. Im praktischen Teil wird anhand von Beispielen aus parallelen Texten untersucht, was für Übersetzungstechniken (Übersetzungsverfahren) von den Übersetzern beim Übersetzen der Realien, also der verschiedenen symbolischen Anzeichen und natürlichen Gegenstände der Kultur der Ausgangssprache (z.B. Speisen, Getränke, Kleidungsstücke, geographische Namen und historische Ereignisse) verwendet werden. Bei der Analyse der empirischen Daten konnte gefolgert werden, dass die Übersetzer beim Übersetzen der Realien vorwiegend mit Techniken und Verfahren wie lexikalische Erweiterung, Generalisierung, Bedeutungstrennung bzw. Bedeutungsaufhebung, Transliteration und totale Umgestaltung operieren. Sie gehen auf diese Weise vor, um die Kenntnisse der Leser über die Kultur der Ausgangssprache zu erweitern und ihre fehlenden Hintergrundkenntnisse in der Zielsprache zu kompensieren.

---

[*] Sarolta Simigné Fenyő is a Doctor and lecturer of Linguistics of the University of Miskolc, Hungary and the head of department and coordinator between the European Study centre and the Faculty of Arts since 2002.

Introduction

Since the collapse of the Tower of Babel people of the world have been speaking different languages. Those who speak only one language (their mother tongue) would never understand people speaking alien tongues if there were no translators who destroy the existing linguistic barriers. Translators are often called bilingual mediators, who mediate not only between two languages but also between two cultures. As it was pointed out by Peter Newmark, one of the greatest contemporary translation scholars „Any old fool can learn a foreign language, but it takes an intelligent person to become a translator" (Newmark in Bell 1994: 35). This idea suggests that in addition to possessing at least two languages, translators need cultural knowledge. Different linguistic forms are only one aspect of the difference between the two languages involved. Translation is not simply a matter of finding appropriate ways of saying things in another language. It is also a matter of cultural knowledge, which involves familiarity with both the source and the target culture and the ability to transmit cultural elements. The objective of the present study is to investigate the various ways of transmitting cultural knowledge in literary translation. It is assumed that cultural problems represented by the source and the target culture can be solved by linguistic means, on the basis of the translator's cultural knowledge.

What is culture?

Culture is a very complex thing. A people's culture consists of ideas, beliefs, customs, objects, ways of doing things, inventions, technology and language. Cultures differ from one part of the world to another. For example eating is a biological need for all human beings. But what people eat, when and how they eat, how they prepare food differ from culture to culture. Environmental differences such as climate and plants influence what people wear. For example people in colder parts of the world wear tailored clothing, but the inhabitants of tropical regions wear draped

clothing. The reason for this is that tailored clothing provides more warmth than draped clothing. Culture is also determined by social relations. According to the British anthropologist Sir Edward B. Taylor culture is "... that complex whole which includes knowledge, belief, art, morals, law, customs and any other capabilities and habits acquired by man as a member of society" (Worldbook Encyclopedia 1990: 1186). Since language is an integral part of culture, and since translators have to transfer a number of cultural terms, it is important to examine the relationship between language and culture.

Views of Anthropologists on Language and Culture

The American anthropologist Franz Boas (1858-1942) raised the subject of culture and emphasized the dynamic relationship between language, culture and thought. In Europe Bronislaw Malinowski (1884-1942) emphasized the need for the study of language in its social context. He realized that language could not be understood without reference to culture. In 1923 he coined the term ‘context of situation’. He said that a language could only be fully understood, when these two contexts, that is situation and culture were clear to the speakers and hearers.

Malinowski stressed the need for fieldwork and went to the Trobriand Islands to study the inhabitants and their language (Kiriwinian). He felt that he had to make a number of changes in translating the inhabitants’ conversations into English. The most important fact was that he realized that he would need to add a commentary if he wanted to make explicit what was implicit for the Trobrianders. First, he had to explain the immediate situation of the conversations to the English readers. Otherwise they would not have realized that the Trobrianders were, for example, guiding fishing boats home while talking. Secondly, he found that not only the immediate environment needed to be explained to the English readers, but also that Trobriand traditions and beliefs were encoded in the texts and were not immediately understandable in translation. He had to take into account these two factors and only after that did

the text have meaning. What Malinowski had in mind was not semantic meaning but cultural or culture-bound meaning. David Katan, associate professor in translation at the Trieste University calls it 'meaning in the context of culture'(Katan 1999: 72). For a long time the traditional approach in linguistics drew a sharp dividing-line between language and the so-called "extralinguistic reality".

Corder's Views on Language and Culture

Later it was discovered that there is a relationship between the linguistic code and the culture of a given community. According to Pit Corder language mediates between the individual and his culture. Language has certain properties, which qualify it for this task. First of all, it can be *codified.* It means that each language refers to persons, objects and events which that culture classifies together in the most economical way. Corder mentions a specific example. "If it is regarded as socially valuable, i.e. important for maintenance of social structure, that a *father's sister's son* should be distinguishable from a *mother's brother's son,* than the language of that community will *encode* that information in an economical and readily memorizable form, e.g. in single words" (Corder 1973: 70). Then Corder mentions another example. In Medieval Britain, it was economically important to make a distinction between different types of *hawk.* That is why there arose a number of simple and easily perceptible distinguishing names like *goshawk, falcon, falconett,* etc. It was more convenient for the language users to use different words than adding adjectival qualifiers to the same word. This is the way language of a community reflects the culture and the needs of a community by making it easy to make distinctions where they are necessary. It is also easy to notice that there are cultural differences between communities on the one hand, and these differences are reflected in the language system on the other (Corder 1973: 70).

Then Corder points out that language mediates between the individual and the culture, because the individual acquires the culture, that is, the way of thinking and forms of behaviour through

his language. At this point the question arises whether the nature of the language *necessarily conditions* the way members of a community see things, whether language *determines* culture. This idea leads us to examine other views about the relationship between language and culture.

W. von Humboldt, E. Sapir and B. L. Whorf on Linguistic Relativity

The vital connection between language and culture, language and behaviour was emphasized by the German linguist and philosopher, Wilhelm von Humboldt. He considered language as the product of activity rather than a static inventory of items, an expression of both the culture and the individuality of the speaker, who perceives the world through language. These ideas a century later were accepted by the American researchers Edward Sapir and Benjamin Lee Whorf, who formulated their famous hypothesis of linguistic relativity. Their claim concerning the relationship between language and culture is that the structure of language determines the way in which speakers of a particular language view the world. This conclusion was based on the detailed study of non-Indo-European languages, which were not included in school curricula, like the "exotic" languages of the American Indians. Whorf, a chemical engineer by training, a fire prevention engineer by vocation and a linguist by avocation maintained, for example, that the verb-system of Hopi directly affected the speaker's conception of time (Whorf 1973: 57-64).

Sapir acknowledged the close relationship between language and culture. He stated that language does not exist apart from culture; they were so closely related that you could not understand the one without the knowledge of the other. His views are most clearly summarized in the following passage:

Human beings do not live in the objective world alone, nor alone in the world of social activity as ordinarily understood, but are very much at the mercy of the particular language which has become the medium of expression for their society. It is quite an illusion to

imagine that one adjusts to reality essentially without the use of language and that language is merely an incidental means of solving specific problems of communication or reflection. The fact of the matter is that the 'real world' is to a large extent unconsciously built up on the language habits of the group (...). We see and hear and otherwise experience very largely as we do because the language habits of our community predispose certain choices of interpretation (In: Whorf in Corder 1993:75).

Like Malinowski, Sapir was also convinced that language could only be interpreted within a culture. But as Katan points out, he went even further. He suggested that "no two languages are ever sufficiently similar to be considered as representing the same reality. The worlds in which different societies live are distinct worlds, not merely the same world with different labels" (Katan 1999: 74). This idea is part of the milder form of the Sapir-Whorf Hypothesis. This hypothesis has a strong and a weak version.

Supporters of the weak version suggest that language is one of the factors that influence our understanding of reality, but it is not the determining factor.

According to the strong view, language determines the way we think. We can only think what our language allows. This idea suggests for example, that bilinguals would automatically change their view of the world when they change language. If this strong version were accepted, this would mean that people, among others translators would become 'prisoners' of their own language and would be capable of expressing only categories that are present in their mother tongue. Nowadays it is widely recognized that such a view is impossible.

As it has already been mentioned, the principle of linguistic relativity has important implications for translation. If we accept that language conditions thought and both are connected with the individual culture of the community that speaks the given language, it would mean that translation is impossible.

At the same time Humboldt propagated the principle of language universals, which issued in Chomsky's concept of deep and surface structures. "In this view translation is a 'recoding' or change of surface structure in representation of the - non-linguistic and ultimately universal - deep structure underlying it. Taken to its extreme, this principle means that everything is translatable" (Snell-Hornby 1988/1995: 41).

When we compare source-language texts and their translations we find that everything is translatable, but the solution, the way of transferring cultural items depends on the translator's competence.

Realia, culturema

This part of the study deals with *realia.* The term itself has two meanings. It is either used to denote objects, ideas, symbols or habits specific to a given language community, or it may be used to name these things or concepts. Thus, for instance *kucsma* may be an item of Hungarian realia, in the sense of a *fur hat,* described as "the ubiquitous winter headgear of men in villages usually made from brown sheep-skin turned inside out, with the lining also made of fur; though it is cut into a peak shape, it is usually worn with the peak crushed in" (Bart 1999: 96). On the other hand, *kucsma* may be a Hungarian word, which stands for the fur hat. *Krumplistészta* (potato noodles) is another example of realia, a Hungarian food in the sense of "Cooked and crushed potatoes are kneaded together with dough to make it more filling, then the mixture is cooked and browned with onions; it is considered the poorest of poor man's fare,…" (Bart 1999: 96). *Krumplistészta* may be a word standing for the food. *Lecsó* is another authentic Hungarian dish made with fresh tomatoes and peppers, and it may be a word standing for this dish. Foreigners arriving in Hungary often ask about a strange phenomenon: the photos of the graduating students in the shop windows. They are called *érettségi tabló* in Hungarian. The objects may be well-known in some of the neighbouring countries, but people in most European

countries are not familiar with the Hungarian custom of putting the photos of the graduating students on display. According to the dictionary *érettségi tabló* is "the framed, formal group photo of a graduating class with the teachers on top and the portraits of the students below, placed on display in the shop window of a busy store for everyone to see, … " (Bart 1999: 50), and it also may be the Hungarian word denoting this group photo. *Kucsma, krumplistészta, lecsó* and *érettségi tabló* are objects of reality belonging to Hungarian culture, and their names are part of the language. But there are countries and cultures where these objects do not exist, thus other languages have no words to denominate them. In such cases realia can be given a detailed explanation.

There are researchers who, instead of realia, use the term *culturema* or *ethnoculturema,* (Tellinger 2005) but in Hungary the term *realia* is more widely used. As pointed out by Klaudy, the concept of *realia* can be interpreted narrowly or broadly/more liberally. "One interpretation would include only items specific to a given cultural/linguistic community (clothes, money, food and beverages, etc.), while the other admits holidays, historical events, names and addresses as well" (Klaudy 2003: 205).

The present study accepts the broad definition because researchers have to examine all the situations where the translator needs culture-specific information, that is, information going beyond the language.

Literary texts often contain terms referring to objects, ideas, events, symbols or habits characteristic for the source-language culture but non-existent in the target language community. For example, it is quite common in Europe that young people exchange kisses in the street. Kisses are part of the wedding ceremony in Europe as well as in most of the countries of the Western world. But there are language communities where this sort of behaviour would be totally inappropriate. It depends on the translators' skill and experience how they transmit cultural elements, how they transmit non-linguistic information through literary texts. As pointed out by

Tellinger, cultural knowledge is an extremely important part of the translator's knowledge base. The researcher is of the opinion that only acquisition of language together with its culture and schooling in the target language community can supply the translator with sufficient cultural knowledge so that he could transfer cultural elements in an appropriate way. In his study Tellinger refers to a Swiss translator Markus Bieler, who translated one of Gyula Krúdy's novels into German. He made a number of mistranslations due to the fact that he acquired Hungarian when he was an adult. What is more, he did not study Hungarian history at school, nor did he experience the Hungarian way of life. There is a phrase *Világos után* in the original referring to a sad event in Hungarian history. Instead, the German translation gives the impression that *Világos* is the name of a place. The published translation says *hinter Vilagos,* which causes misunderstanding, because the sense of the original is *nach Vilagos.* Tellinger finds other cases when the cultural elements are distorted, too. For instance the phrase *Arács környéki olasz rizling (a white wine from the neighbourhood of Aracs)* becomes *Arács környéker Italiener-Riesling,* the Hungrian noun *környék* is supplied with a German ending, which makes the understanding of this brand of wine rather difficult (Tellinger in Simigné-Bodnár 2005: 114).

Translation techniques

In translating even the simplest sentence from one language into another translators unconsciously carry out transfer operations. They are "systematic and routine-like operative moves developed by generations of translators to handle the difficulties stemming from the different lexical system and cultural context of the two languages functioning together in the process of translation (Klaudy 2003: 183). In the case of translating cultural elements translators mainly use operations called *lexical addition, generalisation, transliteration, division of meaning* and *total transformation of meaning.* In the following parts of the study it will be demonstrated how cultural elements characteristic for Hungarian reality were translated into English. The

operations mentioned made it possible for the translators to familiarize the English readers with the history, culture and the way of life of Hungarian people in two important historic periods, the Turkish times and in the interwar period.

Examination of Source and Target Texts

Novels usually contain culture-specific terms that are evident for the source-language readers, but might not be well known for the target language community. When translators find culture-specific terms in the original that exist in the source culture but are missing in the target language culture, they find they have to give explanations. The most typical examples of this kind are additions.

Additions

The reason for adding new meanings is that there is a difference in the background knowledge of the source language and the target language readers. Thus the purpose of this operation is to give additional information, to supply background knowledge for the target language readers. The translational equivalents (which are not dictionary equivalents) illustrating addition were taken from the following books: two Hungarian novels, one by *Géza Gárdonyi* entitled *Egri csillagok (Eclipse of the Crescent Moon), the other by Ferenc Molnár* entitled *A Pál utcai fiúk (The Paul Street Boys), ad their English translations; and a textbook on translation by Kinga Klaudy – Sarolta Simigné Fenyő: Angol-magyar fordítástechnika (English and Hungarian Translation Techniques)* published in 1996 in Budapest. When translating the abovementioned Hungarian novels neither translator could find word-for-word equivalents to a number of culture specific terms. That is why they had to resort to additions, generalization and transliteration. Additions were most frequently used when translators found brand names, toponyms, institutional names and historical realia in the original text. As a result of addition new meanings appeared in the translated text.

Addition in the case of brand names

Brand names are names of foods and drinks, cosmetics, furniture, etc. In the source culture these names may convey social prestige, while the target language readers might not be familiar with them.

Two ***Maltesers,*** *Half pound* ***Earl Grey.*** (Greene 9)

Két csomag ***Máltai cukorka,*** *negyed kiló* ***Earl Grey tea.*** (Ungvári 119)

These examples illustrate that instead of *Maltesers* the Hungarian translation contains *Máltai cukorka (Maltese sweets)* and after *Earl Grey* the word *tea* is added. At the time the Hungarian translation of the novel by Greene appeared, this brand of tea was not as widespread in Hungary as it is today.

Addition in the case of toponyms

By toponyms we mean geographical names, that is, names of countries, rivers, hills, mountains, towns and villages. After toponyms the common nouns like *hill, lake,* or *river etc.* are added in the translation. In the English translation of Gárdonyi's novel, instead of ***Mecsek*** the readers find ***Mecsek Hills***, and instead of ***Balaton*** they find ***Lake Balaton.*** Felföld (highlands) was part of Hungary when the action of the novel took place. A person coming from that part of Hungary was referred to as ***felföldi.*** In order to supply the target reader with sufficient background knowledge the translator resorted to addition again and used the phrase ***a person coming from Upper Hungary.*** In other translations we can also find that instead of ***Sziget (Island) → Margaret Island,*** instead of ***Vérmező→Vérmező gardens*** and instead of ***Krisztina→Krisztina area*** appears in the translated texts. Part of Budapest, ***Rózsadomb*** is given a more detailed explanation: ***a fashionable area in Buda, a certain area near the palace on top of the Várhegy*** (Klaudy-Simigné 1996).

Institutional names

Institutional names might sound strange for readers of a different culture. What is more, target language readers might not know what

a given strange-sounding name is. It might disturb them while reading the novel. It is quite natural for Londoners that ***St. Pancras*** is a railway station or ***Bentley*** is a restaurant, but Hungarian readers are not familiar with these facts. A number of other examples can be mentioned. The name ***Black-Bull*** becomes ***Fekete Ökör fogadó (inn), Harvard and Yale*** becomes ***Harvard és a Yale egyetem (university)*** in the translation. Instead of the ***House of Huddlestone*** the Hungarian translator says: ***Huddlestone bankház (bankhouse,*** containing the word ***bank)*** (Klaudy-Simigné 1996).

Historical realia

Readers do not always have sufficient background knowledge about the historical realia of a different country or a different cultural group. The events of English or Hungarian history often require explanatory addition. For example when an average Hungarian reader finds the word ***Victorian*** in a literary text, it has to be explained that the person or object referred to must have lived or existed in the time of Queen Victoria. So ***Victorian*** becomes ***Viktória korabeli****(reference to a person who lived or an object that existed* ***in the Victorian age)*** in the Hungarian translation. When in Hungarian novels we read about the ***Vörös Újság (Red Newspaper),*** we know what sort of printed matter it was, and which historic period it was published in, but in the English translation some extra information is given: ***Vörös Újság, the Communists' official organ*** (Klaudy-Simigné 1996). Gárdonyi's novel is rich in historical realia, and the following are noteworthy examples:

Dózsa György lázadása is translated **the rebellion led by György Dózsa.** Dózsa György was the leader of the peasant rising in 1514. By adding the term *led by* the translator refers to the fact that he was an important personality in Hungarian history, but it would have been desirable to add the date as well so that the readers were able to place the event in time.When finding the English equivalent to the phrase **Dodó család** (Dobó family) the translation adds information again by using the phrase **branch of the Dobó family.**

Instead of **János király** (King John) the translator gives the full name of the king: **King John Szapolyai.** This explanation is also a piece of information contributing to the background knowledge of the reader. **Jánospárti** (John's man) is equal to **King John's man.** The translator makes it clear that this character of the novel is a man faithful to King John Szapolyai, who was mentioned earlier in the novel. This background knowledge is necessary for the reader to understand the situation.

Generalisation in the Case of Translating Realia

As its name suggests, addition of meaning gives extra information, thus causes gains, because the translated text becomes more informative than the original. Translators often carry out generalization, and this operation causes losses. Broadening of meaning or generalisation "is a standard transfer operation whereby the SL (source language) unit of a more specific meaning is replaced by a TL (target language) unit of a more general meaning" (Klaudy 2003: 201). It can be explained by differences in the conceptual mapping of the world: body parts, colours, kinship terminology, times of the day, reporting verbs, semantically rich verbs, and last but not least realia, that is, cultural terms. Gárdonyi's novel contains a number of terms like ***cipellő, csöcsös korsó, dalia, köpönyeg, tornyos süveg, etc.*** They have no word-for-word dictionary equivalents. The Hungarian word *cipellő* becomes *boots* in the translation. In Hungarian the word *cipellő* usually occurs in fairy tales. It refers to elegant and decorated shoes worn at dances or balls. The English word *boots* does not mean elegant shoes. The meaning of the Hungarian word is generalised and the atmosphere created by the Hungarian word is lost in the translation.

Csöcsös korsó is translated as a ***round pitcher,*** although the object mentioned in the original is a special type of pitcher, which is not only round, but its shape reminds one of the breast of a woman. This meaning is lost in the translation. The word ***dalia*** means a young and a brave warrior, who appears in novels, tales and poems,

but in the translation it becomes ***warrior***. This term lacks the connotation expressed in the original. The noun ***köpönyeg*** is not used in standard Hungarian, but it occurs in folk tales and songs. Its meaning can be expressed by the translated word ***cloak***, but the atmosphere the Hungarian word creates is lost again. ***Kulacs*** is an item of Hungarian realia, a special type of flask, mainly used by soldiers, made of aluminium for holding water. For the readers of the translated text it becomes simply ***bottle***, denoting an object made of glass. ***Töröksüveg*** is a special tall cap worn by the Turks. It is translated as ***Turkish cap***, and as a result, the idea of being tall is lost. ***Tarsoly***, a flat, ornamented leather bag with a long strap carried on the shoulder is equal to *purse* in the translated text, the latter meaning a small bag for holding money, formerly closed by drawing strings together and now usually with a clasp. It is made of leather or plastic, but is not the same thing denoted by the Hungarian term ***tarsoly***. The forms of address are also generalised. ***Bátyám*** *(my brother)* as a polite form of address is used when young men talk to older men and want to express honour or respect. This form is used in Hungarian folk-speech. In the translated text the form ***Sir*** appears, which is not only more general, but sounds more official as well.

Transliteration

In some cases source language graphological units are replaced by target language graphological units. This operation is called transliteration. The source and the target language units are not translation equivalents. In the case of ***akindzsik→akindjis; aszabok→asabs*** the names of the Turkish warriors are transliterated and the readers are supposed to know them. The situation is the same with ***dervis→dervish***; a term that denotes a Muslim religious order. In the novel entitled *A Pál utcai fiúk /The Paul Street Boys* the writer transliterates the word ***einstand,*** because the original text gives a detailed explanation of what ***einstand*** means. Of course, this explanation is also part of the translated text, so the understanding of what it means is not at all difficult. The meaning of

the noun ***grund*** is also explained in the original and as a consequence, transliteration does not hinder the understanding of the translation. But there is an example demonstrating that transliteration is not always the best solution. The Hungarian word for secondary grammar schools is ***gimnázium.*** As a result of transliteration it becomes ***gymnasium*** in the English translation, which is misleading, because ***gymnasium*** in English means the room where P.E. lessons take place.

Division of Meaning

The translators of the Hungarian novels often used division or distribution of meaning. It is a "standard transfer operation whereby the complex lexical meaning of a SL word is distributed over several words in the TL" (Klaudy 2003: 223). This operation is explained by the different segmentation of reality. It can be illustrated by the following examples, proving that the meaning of cultural terms is often divided, when the direction of translation is Hungarian→English. One word in the source language has equivalents consisting of more than one word in the translated text, for instance ***alföld→open country; alföldi (diákok) → country (lads) of the wide open spaces; bugyogós→ in baggy trousers; félszeme→ one of his eyes; kendő→cloth bandage; csuha→ monk's habit; keresztes végű bot→big stick that ended in a cross; örömanya → the bride's mother***, etc.

Total Transformation of Meaning

By total transformation we mean "a standard lexical transfer operation whereby meanings of the SL text are replaced by other meanings in the TL text, which do not seem to show any logical relation with the SL meaning (Klaudy 2003: 282). In literary texts total transformation is required more frequently than in translating scientific texts. "The more a SL text is tied to time, place or culture, the greater the need for total transformation" (Klaudy 2003: 300). Gárdonyi's novel entitled ***Egri csillagok*** is tied to the 16th century, the

time of the Turkish invasion. It described the siege of Eger, the heroic deeds of the Hungarians. In 1552 the defenders of the castle of Eger defeated the Turkish army. This achievement was remarkable. Everybody knows it in our country, but English readers might not be familiar with this historic event. Although the German translation of the title is ***Sterne von Eger***, and the Russian translation is ***Звёзды Эгера***, the translator of the English version decided not to use a word for word translation, but to transform it, because English readers might not know anything about the history of the town of Eger. The title of the English translation is ***Eclipse of the Crescent Moon,*** which suggests that the action of the novel takes place in the time of the wars with the Turks. Of course, this is not the only example illustrating total transformation of meaning. The Hungarian small change of the time, ***krajcár*** is replaced by ***penny,*** idiomatic expressions also have equivalents that are totally transformed. For example the phrase ***ha szorul a csizma*** *(when the boots are very tight)* cannot be broken down to its constituents, because it has nothing to do with boots, so it is replaced by a phrase expressing the same idea: ***if you are in trouble.***

Translating for the EU

Cultural knowledge is an important part of the translator's competence. It is not only the case when literary texts are translated, but it matters greatly when translators work for the institutions of the EU. The lack of one-to-one relationship between linguistic and cultural items not only causes problems when they translate legal documents but also when the translations are made for EU citizens.

Some concepts are specific to certain countries, thus difficult to express in a different language. For instance, due to their geography and climate, the Mediterranean countries have a variety of terms related to olive growing. When reports on this subject have to be translated into Danish or Finnish (the languages of countries where no olives are grown), translators can solve the problem by paraphrase. In Greek there is no national equivalent for Atlantic fish

species. Nor has the language names for certain non-Mediterranean species. In this case the Latin terms for fish are used in the translations. In some cases the most ordinary words, for example colour terms have different connotations in different countries. The word *green* can be translated into European languages without difficulty. But the problem is that its symbolic meaning varies. The literal translation of ***green Europe*** means different things for different nationalities: agriculture for the French and Spanish, environment protection for the German, gardening or politics for the British. Similar problems arise when translating texts about the Member States' institutions. The French ***Chambre des députés*** can be translated neither by ***House of Commons*** nor ***Bundestag.*** But if they translate it the ***French lower house***, the meaning may be unclear. The best solution seems to be ***the French equivalent of the House of Commons*** or to leave it in French.

Conclusion

The aim of translation is to destroy linguistic and cultural barriers between people speaking different languages. It is the task of the translator to find ways of transferring information into the target language. When there are no corresponding linguistic items in the languages concerned, they must not seek equivalence on the level of words, but they have to strive to gain it on the level of larger units. In many cases translators have to add extra information to the original, give explanations to their readers. When they use generalisation, some of the original meaning is lost. But when they apply addition, division or total transformation of meaning, there may be gains in the translated text. In such cases it is easy for the reader to imagine situations that were described in the original. When there is no other choice, they resort to transliteration of certain words, which sound the same in both languages. Translators have to use the techniques described in this study in the interest of their readers.

Sources

1. Bart, I. 1999. *Hungary & the Hungarians. The keywords - a concise dictionary of facts and beliefs, customs, usage & myth.* Budapest: Corvina.
2. Bell, R.T. 1994. *Translation and Translating. Theory and Practice.* London and New York: Longman.
3. Corder, S. P. 1973. *Introducing Applied Linguistics.* London: Penguin.
4. Katan, D. 1999. *Translating Cultures.* London: St. Jerome Publishing.
5. Simigné Fenyő S. – Bodnár I. 2005. *Sokszínű nyelvészet. Nyelvészeti kutatások a Miskolci Egyetem Bölcsészettudományi Karán (Colourful Linguistics. Linguistic Research at theUniversity of Miskolc, Faculty of Arts).* Miskolc: Miskolci Egyetem, BTK.
6. Tellinger, D. 2005. *Az etnokulturémák szerepe a műfordításban (The Role of Ethnoculturemas in literary translation).* Under publication. University of Miskolc, Faculty of Humanities.
7. Tellinger, D. 2005. A reáliák fordítása Márai Sándor "A gyertyák csonkig égnek" című regényének szlovák és cseh átültetésében. Translation of Realia in the Slovak and Czech translation of a novel by Márai) In: Simigné-Bodnár (szerk.) *Sokszínű nyelvészet. Nyelvészeti kutatások a Miskolci Egyetem Bölcsészettudományi Karán (Colourful Linguistics. Linguistic Research at theUniversity of Miskolc, Faculty of Arts).* Miskolc: Miskolci Egyetem, BTK.
8. Klaudy K. 2003. *Languages in translation. Lectures on the Theory, teaching and Practice of Translation.* Budapest: Scholastica.
9. Klaudy, K.–Simigné Fenyő S. 1996. *A fordítás lexikája és grammatikája. Angol-magyar fordítástechnika (Lexis and grammar of translation. English-Hungarian translation techniques.* Budapest: Nemzeti Tankönyvkiadó.
10. Newmark, P. P. 1969. Some notes on translation and translators, *Incorporated Linguist, 8(4), 79-85.*

11. Snell-Hornby, M. 1988/1995. *Translation Studies- An Integrated Approach.* Amsterdam/Philadelphia: John Benjamins Publishing Company.
12. Whorf. B.L. 1973. *Language, thought and reality. Selected writings*. (ed. J. B. Carroll.) Cambridge: MIT Press
13. Zeleny, R. O. (Ed. in Chief) 1990. *Worldbook Encyclopedia*. Vol. 3. Chicago-London-Sydney-Toronto: Worldbook Inc. Schottfetzer Company.

Literary sources

1. Gárdonyi G. 1959. *Egri csillagok.* Budapest: Móra Ferenc Könyvkiadó.
2. Gárdonyi, G. 1991. *Eclypse of the Crescent Moon.* Budapest: Corvina. Ford: Cushing, G. F.
3. Greene,G. 1979. *The Human Factor*. New York: Avon Books.
4. Greene, G. 1980. *Az emberi tényező.* Budapest: Magvető. Translated by T. Ungváry.
5. Molnár F. 1952. *A Pál utcai fiúk.* Budapest: Móra Ferenc Könyvkiadó.
6. Molnár, F. 1994. *The Paul Street Boys.* Translated by L. Rittenberg. Budapest: Corvina

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

LEXIKALISCHE FEMINISIERUNGSTENDENZ ALS SPRACHKULTURELLES PHÄNOMEN IN EUROPA

Erika, Kegyesné Szekeres*

Abstract
This paper examines one of the most relevant aspects of feminist linguistics, e.g. the feminine use of language concerning the female names of persons and titles. From this aproach, feminist language criticism starts out from the basic objective that women should be made visible in their fields of occupation as well as through the social positions they hold. Linguistic data of several languages in the European context show that a tendency of feminization is characteristic of quite a lot of European languages. Linguistic feminization, however, should be interpreted in different ways as far as the self- and foreign-positioning of the female individual is concerned. On one hand, a distincition is to be made between self-reflexion and foreign-reflexion in the sociolinguistic sense, on the other hand, the interdependence of the perception of foreign portrayal and the language production mechanisms of self-portrayal in the psycholinguistic sense should not be underestimated. As to the questions of linguistic feminization, the main issue ist the image „that women present of themselves and that they have of themselves" (Burr, 1998).

Einleitung: Feminisierungsproblematik und sprachlicher Referenzbereich

Vor allem von westeuropäischen VertreterInnen der Feministischen Linguistik und vorwiegend im Kontext Genus- und Sexuskategorien[1]

---

* Universität Miskolc, Lehrstuhl für Deutsche Linguistik

[1] In der Linguistik wird die Kategorie Genus traditionell im Sinne des grammatischen Geschlechts behandelt, während Sexus als „natürliches oder biologisches Geschlecht" der Lebewesen aufgefasst wird. Es gibt sowohl

zuweisender Sprachen wurde die Frage diskutiert, ob Frauen und Männer gleiche Chancen des *Gemeintseins* und *Benanntseins* in der Sprache haben. Im Rahmen dieser Problemstellung werden von der Feministischen Linguistik Vorschläge unterbreitet, die den sog. geschlechtergerechten Sprachgebrauch favorisieren. Durch Sprachbeispiele wird zum Beispiel unter anderem im deutsch-, französisch-, englisch- und italienischsprachigen Umfeld modelliert, wie asymmetrische Grundbenennungen von Personen in ihren Handlungs- und Tätigkeitsfeldern und Männer in den Vordergrund stellende Referenzbezüge im Sinne der sprachstrukturellen *Gleichbehandlung der Geschlechter* vermieden werden können (Samel 2000). Solche Strategien lassen sich unter dem Terminus der symmetrischen *Beidnennung* zusammenfassen (dt. *Lehrer und Lehrerinnen, Schüler und Schülerinnen, Studenten und Studentinnen*), die in ihren Lang- oder Kurzformen auf beide Geschlechter Bezug nehmen.

Die *sprachpolitische* Forderung zur Anwendung auf die Frau explizit referierender femininer Formen ist als Eingriff in die

Überschneidungen als auch Diskrepanz zwischen Genuskategorisierung und Sexuskategorisierung (z.B. die Frau und das Weib im Deutschen). Im Englischen wird aber das grammatische Geschlecht durch das Wort *gender* wiedergegeben, unter dem Terminus Gender wird aber in der sprachwissenschaftlichen Fachliteratur das soziale Geschlecht verstanden, in Abgrenzung zur Kategorie des Sexus. In der linguistischen Literatur wird sowohl die Position vertreten, dass Sexus und Genus zusammenhängende Kategorien sind, als auch die Position, dass es keinen Zusammenhang zwischen Genus und Sexus geben kann. So ist auch die Frage relevant, ob es zwischen den Kategorien Sexus und Gender eine Koppelung gibt. Zwischen Sexus und Gender sind sowohl symmetrische als auch asymmetrische Beziehungen möglich. Es existieren Sprachen, die Genuskategorien zuweisen, und solche die es nicht tun. Aber auch in den Sprachen, in denen die Genuszuweisung keine Relevanz hat, werden Sexus- und Genderkategorien mit unterschiedlichen Mitteln markiert. Das grammatische Geschlecht (Genus, grammatical gender) soll vom natürlichen Geschlecht (Sexus, natural gender, sex) unterschieden werden, ebenso wie Sexus vom sozialen Geschlecht (Gender).

Sprachkultur[2] einer Sprachgemeinschaft zu interpretieren. In der deutschen Schriftform fanden zum Beispiel die Splittingformen (wie z.B. Beidnennung mit Hilfe des Schrägstrichs, des großen Binnen-I oder der Klammersetzung (*Lehrer/Lehrerin, Doktor/in, RichterIn, der/die Schüler(in)*) als Ergebnis sprachkulturellen Eingriffs feministischer Sprachpolitik gesellschaftliche Akzeptanz. Die propagierten Strategien der Beidnennung führten aber auch zur größeren sprachlichen Sensibilität in der *Sprechkultur* der sprechenden Individuen. Daraus resultierte im deutschen Sprachgebiet die *sprachplanerische bzw. sprachpflegerische* Frage der konsequenteren Bildung und bewusster Anwendung femininer Sprachformen.

Sprachpolitische Maßnahmen, die zur intensiven Bildung von weiblichen Personen- und Berufsbezeichnungen beitrugen, summierten sich im sprachlichen Prozess der *Movierung*[3] (dt. vorwiegend mit *-in*). Die Praktiken der Beidnennung und die Techniken der Movierung sind in ihren referenziellen Beziehungen sexus-markierend, weil sie auf das weibliche Geschlecht *extra und*

[2] Der Begriff *Sprachkultur* wird in soziolinguistischer Literatur verschieden interpretiert. Einerseits referiert der Terminus auf ein Arbeitsfeld der Sprachpolitik, Sprachpflege und Sprachplanung, und weist auf die Bestrebung hin, dass bestimmte sprachliche Erscheinungen normiert werden, um den Sprachgebrauch einer Sprachgemeinschaft standardisieren zu können (vgl. Bussmann 2002 und Trudgill 1997). Andererseits soll im Zusammenhang mit der Sprachkultur auf den Begriff *Sprechkultur* verwiesen werden, also auf die individuelle Sprechweise. Wenn aber dieselben sprachlichen Erscheinungen bzw. Sprachgebrauchsformen bei vielen Sprechenden einer Sprechgemeinschaft oder bei ganzen gesellschaftlichen Gruppen als gemeinsame Merkmale der Sprachbenutzung auftauchen, sind diese ebenfalls auch als Elemente der Sprachkultur zu betrachten, ganz unabhängig davon, in welchem Verhältnis sie zur Sprachnorm bzw. Standardsprache stehen.

[3] Movieren bedeutet ursprünglich, ein Wort dem jeweiligen Genus entsprechend verändern, ein anderer *Terminus Motion*, wobei in der Bedeutung auf das lateinische Verb *movere* (‚bewegen') zurückgegriffen wird. In der Feministischen Linguistik versteht man darunter die feminisierte Variante der Personen- bzw. Berufsbenennungen (z.B. im Deutschen der Lehrer – die Lehrerin, wobei die Movierung auf grammatischer und morphologischer Ebene erfolgt).)

explizit Bezug nehmen. Parallel mit den Movierungstechniken bildeten sich die sog. neutralen Berufs- und Funktionsbezeichnungen (dt. z.B. *Studierende, Lehrende, Kaufperson*) heraus, die keinen expliziten sexus-markerierenden Charakter aufweisen, aber ihr Referenzbereich bezieht sich auf beide Geschlechter (Hellinger 1990). Dieser Prozess lässt sich zusammenfassend *Neutralisierung* nennen, und bedeutet den verstärkten Gebrauch von Berufsbezeichnungen geschlechtsneutralen Charakters, in Gegenüberstellung zum maskulinen Referenzbereich der generischen Bezeichnungen.

Daraus folgt: Zwei länder- und sprachenübergreifende Tendenzen kristallisierten sich in Bezug auf die Geschlechterreferenzproblematik aus:

(1) Die eine Tendenz nennt beide Geschlechter explizit, indem sie diese aber gerade durch die explizite Sichtbarmachung voneinander auch trennt, einander gegenüberstellt. Dabei wird die Sichtbarmachung der Frau besonders akzentuiert. Dieser sprach- bzw. sprechkulturelle Ansatz hatte einen stärkeren sprachlichen *Feminisierungsprozess* in vielen Sprachen Europas zur Folge.

(2) Die andere Tendenz wirkt der expliziten Hervorhebung des Geschlechts (Sexus) entgegen, lässt sexus-markierende Sprachformen mit der Begründung nicht zu, dass die sprachlich explizite Hervorhebung der Geschlechtlichkeit die Geschlechter nach alten Schemata wieder und erneut in Opposition stellt, und somit eine Binarität enstehen läßt, die gerade nicht der Gleichberechtigung der Geschlechter dient.

Bei der Entscheidung für den einen oder anderen Weg spielen nicht nur systemlinguistische Fragen eine Rolle, sondern auch allgemeine politische und speziell frauenpolitische Faktoren. In den deutschsprachigen Ländern hat sich eine stärkere Tendenz zur Feminisierung durchgesetzt, im Englischen nicht. Im Englischen dominiert die Tendenz zur Neutralisierung, also verlieren „geschlechtsspezifische morphologische Markierungen im Bereich der Personenbezeichnung“ (Hellinger 2000: 177) immer mehr an

Bedeutung, stattdessen werden sprachkulturell und sprachpolitisch die geschlechtsneutralen Formen wie *chairperson* gefördert. Trotz alledem lassen sich die Spuren des sprachkulturellen Phänomens der Bildung von explizit femininen Sprachformen fast in allen Sprachen in Europa erkennen, wonach dies derzeit als „spektakulärste sprachliche Erscheinung“ (Hellinger 1985: 22) der letzten 20 bis 25 Jahre bezeichnet werden kann.

Durch dieses sprachkulturelle Phänomen wurde in vielen Ländern und Sprachen Europas ein Sprachwandel ausgelöst, der von Hellinger 1985 wie folgt charakterisiert wurde: „In den (…) europäischen Ländern besteht ein Mißverhältnis zwischen den Erfahrungen von Frauen und den sprachlichen Mitteln, die ihnen für die Verbalisierung dieser Erfahrungen zur Verfügung stehen. Dieses Missverhältnis, dessen Ursachen in der sozialen sowie sprachlichen Ungleichbehandlung von Frauen und Männern liegt, hat dazu geführt, daß Frauen verstärkt nach sprachlichen Alternativen suchen, die Gemeintes und Gesagtes zur Deckung bringen. Verstärkt streben Frauen auch behördliche Sprachregelungen (z.B. über den Weg verbindlicher Richtlinien) an, um – z.B. in der Praxis von Stellenanzeigen – eine sprachliche Gleichbehandlung im öffentlichen Raum zu erreichen. Diese sprachpolitischen Aktivitäten werden letztlich von der Überzeugung getragen, daß Bemühungen um die sprachliche Gleichbehandlung von Frau und Mann als Teil eines umfassenden sozialen Wandels aufzufassen sind (…).“ (Hellinger 1985: 23-24)

Die von Hellinger formulierte oben zitierte frauenpolitische Zielsetzung und deren Sprachpraxis haben im europäischen Sprachfeld viele Befürworter und Gegner gefunden, da die sprachliche Feminisierung die Spezies alt bewährter kommunikativer Traditionen europaweit in Frage stellte. Von den Nicht-Befürwortern sprachlicher Feminisierungstendenzen werden meist die folgenden Argumente angeführt: es sei eine Überdimensionierung eines *kleinen* sprachlichen Unterschiedes, die nichts anderes zur Folge hat als die gesellschaftliche

Überdifferenzierung eines sprachsozialen Problems, wonach auch die Sprache als eines der wichtigsten Kampfelder der Geschlechter instrumentalisiert werde. Die sprachlichen Mittel der Feminisierung seien sprachstrukturell unwirksam und beruhen auf sprachwissenschaftlichen Irrtümern[4], wonach auch solche Sprachformen gebildet wurden wie zum Beispiel im Deutschen die feminisierten Formen von Fremdwörtern *(dt. Rektorin, Dekanin, Teenagerin, Insiderin)*, die bestenfalls als Ausnahmefälle hätten gelten sollen. Die Antifeministen behaupten über die neu gebildeten femininen Sprachformen sehr oft, dass es hier gesellschaftlich gesehen nur um Alibi-Feminismus geht, der sich aus der sozialen Zwickmühle in den kommunikativen Zwickmühlen der Sprache einen Ausweg sucht, indem für die Anerkennung künstlich fabrizierter Erscheinungen gekämpft wird.

Nicht nur unter den SprachwissenschaftlerInnen und nicht nur in den deutschsprachigen Ländern entfaltete sich eine lebhafte Debatte. Das Thema *Feminisierung der Sprache* sorgte für eine große gesellschaftliche Diskussion. Auch in Online-Diskussionen taucht das Thema *Sprache und Geschlecht* immer wieder auf. Französisch lernende Jugendliche berieten sich zum Beispiel bei *LEO Link Discoussion Générale*, ob das *–innen* auch in das Französische übernommen wird. Neuerdings war auch in einer ungarischsprachigen Online-Diskussion[5] das Thema Sprache und Geschlecht zu entdecken. In Bezug auf das Ungarische wurde hier von den Gesprächsteilnehmern diskutiert, ob die generischen Formen („das generische Maskulinum[6]") im Ungarischen auch als

---

[4] Z.B. Lorenz (1991), Leiss (1994) und Doleschal (2002) geben in sprachwissenschaftlicher Hinsicht sehr guten Überblick über die pro und contra Argumente.

[5] FOTEXNet HIX, http://www.hix.com./cgi-bin/archive

[6] Unter diesem Terminus wird im Allgemeinem die Benutzung von sog. sprachlich unmarkierten, also Sexus nicht explizit markierenden Bezeichnungen verstanden, die in ihrem Referenzbereich Frau und Mann gleichermaßen bezeichnen, aber nach dem Sprachempfinden der Sprechenden bzw. der kulturellen Ausprägung des traditionellen patriarchalischen Gesellschaftsmodells referieren generische

geschlechtsbezeichnend (sexusmarkierend) funktionieren, und ob sie auch im Ungarischen vorwiegend auf die Kategorie Mann referieren (z.B. *ung. igazgató, dt. Direktor*)[7]. Paradox scheint die Fragenstellung an sich, da das Ungarische keine explizite Mittel zur Bildung maskuliner Formen hat, im Ungarischen können nur feminine Formen mit lexikalischer Sexusmarkierung gebildet werden.

Aus den obigen Beispielen geht deutlich hervor, dass die einzelsprachliche Problematisierung und Ausprägung des Problems des referenziellen Bereichs Personen auch in ihrer Geschlechtlichkeit bezeichnenden Lexeme als eine mehrere Sprachgemeinschaften betreffende Problematik zu behandeln ist. In den einzelnen Sprachgemeinschaften können jedoch unterschiedliche Tendenzen unterschiedlichen Charakters beobachtet werden, die von der Beschaffenheit des jeweiligen sprachlichen Systems und verschiedenen außersprachlichen Dimensionen wie der aktuellen gesellschaftlichen Stellung der Frau abhängig sind. Trotz aller sprachlichen Verschiedenheiten und kulturellen Unterschiede der betroffenen Sprachen zeichnet sich die Tendenz zur Feminisierung als ein Sprachkulturen übergreifendes Phänomen in Europa ab. Darunter ist zu verstehen: die Feminisierung will die sprachlich sichtbare Darstellung der Frau, durch systematischen Gebrauch von explizit femininen Formen in kommunikativen Situationen bewirken, wo auch auf die Referenzkategorie Frau Bezug genommen wird. In vielen kommunikativen Situationen wurde und wird auf

---

Maskulina eher auf Männer als Frauen. Die Benutzung von generisch maskulinen Sprachformen lässt als alternative Möglichkeit das Mitgemeintsein der Frau zu, nach der Sprachkultur der maskulin geprägten Sprachgemeinschaften garantiert es dieses aber nicht. Bei der Ablehnung der Benutzung von generischen Maskulina geht es darum, dass die Frauen nicht nur mitgemeint sein, sondern auch sprachlich als selbständige Individuen erscheinen wollen, indem sie explizit benannt werden.

[7] In einer linguistischen Stellungnahme zur Frage des Referenzbereiches generischer Formen wurde die Frage gestellt: Können Geophysiker Frauen sein? (s. Braun et al. 1998). Mir scheint, als ob jetzt diese Frage in der zitierten Online-Diskussion auf das Ungarische folgendermaßen übertragen werden kann: Kann ein Direktor eine Frau sein?

Frauen in vielen Sprachen von Europa nur impliziert (oder gar nicht) referiert.

Die sprachliche Feminisierungstendenz bringt aber Fragen mit sich, die nicht nur in sprachkultureller bzw. sprachpolitischer Hinsicht, sondern auch sozio- und psycholinguistische bzw. pragmatische Relevanz haben. Solche Fragen sind zum Beispiel:

(1) Wer referiert auf die Frau? Geht es um Selbstpositionierung oder Fremdpositionierung?

(2) Wie wird auf die Frau referiert? Geht es dabei etwa um eine besondere Betonung des Frauseins?

(3) Wer akzeptiert feminine Formen in Fremdpositionierung und warum?

(4) Wer lehnt die Benutzung von femininer Formen ab und warum?

Feminisierungstendenzen als sprachkulturelles Phänomen

Die sprachlichen Feminisierungstendenzen dominierten in den letzten Jahren vor allem im westlichen Teil Europas so intensiv, dass diese Problematik auch in die Thematik der Sprachpolitik vieler europäischer Länder Einzug fand. Manche sprechen heutzutage in dieser Hinsicht über einen (feministischen) Sprachwandel in Europa. Die Feminisierungstendenzen lassen sich in unseren Tagen auch schon in vielen Ländern und Sprachen in Mitteleuropa nachempfinden. Unabhängig davon, ob eine Sprache Genussystem verzeichnet oder nicht, und abgesehen davon, welcher Sprachfamilie eine Sprache nun angehörig ist, scheint die Tendenz zur sprachlichen Sichtbarmachung der Frau eine europaübergreifende sprachliche bzw. sprachpolitische Entwicklung zu sein.

Die sprachliche Sichtbarmachung der Frau lässt sich in diesem Sinne als ein europäisches sprachkulturelles Phänomen beschreiben. Sprachkultur darf hier in folgender Weise verstanden werden, dass Sprachkultur auch als ein Konzept der realen Sprachwelt aufgefasst werden kann, in der bestimmte sprachliche Phänomene systematisch praktiziert werden. Die Feminisierungstendenzen vieler Sprachen

stellen gerade in ihren systematischen Erscheinungsformen Kategorien dar, die die Sprachpolitik der Europäischen Union mit zu bestimmen haben.

Die Forderung zur Sichtbarmachung der Frau in der Sprache brachte in der westlichen Sprech- und Schreibkultur sprachkulturelle sowie frauenpolitische Entwicklungen mit sich, obwohl die sprachliche Feminisierungstendenz nicht eindeutig und keineswegs einheitlich positiv empfangen wurde. Verbreitungs- sowie Akzeptanzgrad der Feminisierungstendenzen hängen auch „von sozio-kulturellen und politischen Faktoren sowie sprachwissenschaftlichen und –pflegerischen Traditionen in den einzelnen Ländern und Sprachen" (Hornscheidt 2000: 279) ab. Die Gebrauchsfrequenz der femininen Formen wird auch von den aktuellen sprachpolitischen und gesellschaftspolitischen Einstellungen mitbestimmt und in einem hohen Maße mit beeinflusst, sie ist aber auch den sprachsystematischen Ausdrucksmöglichkeiten einer bestimmten Sprache weitgehend unterworfen.

Im Deutschen ist zum Beispiel die sprachliche Sichtbarkeit der Frau als vorrangiges Ziel der Feministischen Sprachpolitik auf der administrativen sowie legislativen Ebene des Sprachgebrauchs mehr oder weniger realisiert worden, weil in vielen Textsorten wie z.B. in Formularen, Stellenanzeigen, Gesetzestexten, Zeitungsartikeln usw. ein verstärkter Gebrauch femininer Personen- und Berufsbezeichnungen zu beobachten ist (Hellinger 2000: 177). Greve, Iding und Schmusch (2002) untersuchten zum Beispiel die Formulierungen in Stellenangeboten in regionalen und überregionalen Zeitungen. Ihr Gesamtergebnis war, dass in ca. 30% aller untersuchten Fälle nur das eine Geschlecht angesprochen war, in 10% der Fälle beinhalteten die Stellenangebote sog. „neutrale Formen" wie *Leute, Personal, Kraft*. In allen weiteren Fällen waren beide Geschlechter angesprochen, wobei bei der sprachlichen Formulierung in der Mehrheit die Schrägstrich-Variante bevorzugt wurde. Es gibt aber bedeutende Unterschiede in Bezug auf die

Kategorie und Erscheinungsgröße der untersuchten Zeitungen. Es wird zum Beispiel in Fachzeitschriften häufiger mit der Klammer-Variante gesplittet, und in überregionalen Zeitungen formulieren die Inserierenden geschlechtssensibler als es der Fall in den regionalen Zeitungen ist. Bühlmann (2002) untersuchte, wie die Frauen in verschiedenen Deutschschweizer Tageszeitungen in den journalistischen Textsorten dargestellt werden und kam zum Schluss, dass die Sichtbarmachung versus Unsichtbarmachung der Frau größtenteils von den redaktionsinternen Richtlinien abhängig ist. Der *Blick* zum Beispiel wirkt sexistischem Sprachgebrauch nicht entgegen, gerade im Gegenteil: er versucht ihn zu verfestigen. Als ein schweizerisches Modell zur Behandlung der sprachlichen Geschlechterfragen wurde herausgearbeitet, dass sog. Kollektivbezeichnungen in die Sprache eingeführt wurden *(die Regierung, das Lehrerkollegium, das Prüfungsteam*). Die Untersuchung von Bühlmann hat auch gezeigt, dass generische Maskulina und Kollektivbezeichnungen vor allem auf Personen mit aktiven und prestigeträchtigen Positionen sowie Funktionen referieren, während mit Doppelformen oder geschlechtsneutralen Formen Personen bezeichnet werden, deren Tätigkeitsfelder eher passiv oder nicht so angesehen sind.

In den deutschsprachigen Ländern ist aber auch die Rezeption der femininen Formen von Titulierungen und Berufsbezeichnungen nicht gleichermaßen fortschrittlich. Doleschal (1998) wies darauf hin, dass in Österreich auf legislativer und administrativer Ebene im universitären Bereich eine sprachliche Gleichstellung von Frau und Mann mit besonderem Nachdruck empfohlen wurde, geprägt von aktuellen frauenpolitischen und frauenemanzipatorischen Ereignissen, wonach es auch anzunehmen ist, dass viele die Splittingformen zum Beispiel nicht aus eigenem Einverständnis, sondern dem kollektiven Sprachgebrauch zuliebe mitmachten. Untersuchungen haben gezeigt, dass die Feminisierungstendenz und im allgemeinem die feministische Sprachkritik in der Schweiz in der Mehrheit mit positiven Reaktionen quittiert wurde (Peyer und Wyss

1998). Feminisierungstendenzen zeigten und zeigen sich in der Schweiz vorwiegend in konkreten gesplitteten Formulierungen in der Standardsprache, sie kommen sporadisch aber auch in der Mundart vor. Über die Situation in Deutschland schreibt Doleschal (1998: 27): „Die Tendenz zur Feminisierung, wo auch auf Frauen Bezug genommen wird, ist nahezu ungebrochen. Das Bewusstsein für die Gefahren des generischen Maskulinums hat aber nachgelassen. Für gemischte Gruppen überwiegt der Rekurs auf das generische Maskulinum, in Gesetzen, öffentlichen Texten wird Beidnennung oder Neutralisierung befürwortet und vermehrt praktiziert.“ Selbst in den westlichen und östlichen Bundesländern der Bundesrepublik Deutschland darf über eine einheitliche Tendenz zur Feminisierung in verschiedenen Situationen der Anrede und Benennung gesprochen werden. Trempelmann (1998) wies zum Beispiel nach, dass seit 1990 eine verstärkte Neigung zum Gerbrauch femininer Formen auch in den östlichen Bundesländern zu verzeichnen ist, in Anlehnung und im Rahmen der Forderungen des politisch korrekten Sprachgebrauchs. Aber 15 Jahre nach der Wiedervereinigung herrscht immerhin noch ein anderes Verständnis für die femininen Sprachformen bei den StudentInnenvertretungen im Osten und Westen vor[8].

Auch im Französischen[9] wurde zum Beispiel im Jahre 1997 in einer Presseerklärung der Regierung offiziell gefordert, feminine Funktionsbezeichnungen zu benutzen, wenn Position und Funktion

[8] http://www.latnrw.de/artikel69/html

[9] Das Französische verfügt über zwei Genera (maskulin, feminin), die maskulinen Sprachformen haben in der Regel Vorrangigkeit. Auch im Französischen werden Femininum und Maskulinum z.B. in Bezug auf Personenreferenz unterschieden. Bei den Lebewesen referiert im Allgemeinen das Genus auf das natürliche Geschlecht und ist deshalb „semantischer Natur“, in allen übrigen Fällen wird kein solcher Zusammenhang festgelegt (Burr 1998). Zur Bildung femininer Sprachformen stehen mehrere Möglichkeiten mit Ableitungssuffixen zur Verfügung *(bei Nomina agensis z.B. -e, -trice, -euse, -esse; bei Nomina épicènes z.B. -aire, -iste, ologue*). Besonders –*esse* und –*euse* können heute als unproduktiv gelten, da sie über negative Konnotation in Bezug auf Frauen verfügen (Hellinger 1985, 1990).

von einer Frau getragen werden. In dieser Erklärung werden Frauen hohen Amtes demonstrativ als *directrice* bezeichnet und nicht, wie es bisher der Fall auch im Französischen war, als *directeur* (Burr 1998). Im Vergleich mit der deutschen sprachlichen Realität vollzog sich in der französischen Sprache eine viel schwächere Feminisierungstendenz, wie es in soziolinguistischen Schnittstudien bewiesen wurde. Schafroth (1993) zum Beispiel untersuchte die Bezeichnungen in Stellenanzeigen und kam zum Schluss, dass gesellschaftlich hochgestellte, intellektuelle Berufe und Funktionen gerade unter eine Feminisierungssperre (auch seitens der Frauen) fallen, da Prestige eindeutig mit generischen Formen verbunden ist. Durch häufigeres Auftauchen femininer Formen im privaten und offiziellen Sprachbereich kam es aber bis heute auch im Französischen zu einem neuen Selbstverständnis der Frauen. Das neue Frauenbild und die neue Identität der Frau zeigte sich in einer Sensibilisierung in Geschlechterfragen und auch in der konkreten Sprachpraxis wurden zumindest die gängigen femininen Berufs-, Funktions-, Positionsbezeichnungen (z.B. fr. *procuratrice générale (dt. Generalstaatsanwältin), fr. directrice (dt. Direktorin), fr. conseillère* (*dt. Beraterin)*) aktiver gebraucht. Schließlich wurde ein Rundschreiben über die Schaffung weiblicher Formen für Amts- und Berufsbezeichnungen sowie Titel verfasst, das die französische Regierung im März 1998 herausgab. Damit im Zusammenhang äußerte sich Genevieve Fraisse, die bekannte französische Philosophin und Historikerin so: „Der Kampf um die Schaffung der weiblichen Funktionsbezeichnungen ist meiner Meinung nach der Kampf um den Zugang zur Macht. Wir greifen die Macht an, die politische, sprachliche, symbolische Macht, die unter dem Schutzmantel der Abstraktion in Wahrheit sexistisch ist. Und deshalb spreche ich auch von Gleichbehandlung im sprachlichen Bereich.[10]"

[10] © Außenministerium / Label France, Das Magazin.

Während in Frankreich das Thema der sprachlichen Feminisierung eine große gesellschaftliche und parlamentarische Debatte hervorrief, wurden Vorschläge zum geschlechtergerechten Sprachgebrauch und zur Vermeidung der generellen Verwendung des generischen Maskulinums in Referenzsituation auf Frauen (u.a. die Vorschläge von Sabatini) in Italien in der Öffentlichkeit kaum diskutiert, obwohl die sprachpolitische Situation der femininen Bezeichnungen auch im italienischen Sprachraum von ministeriellen Empfehlungen gekennzeichnet war[11]. Sabatini vertritt die Meinung, dass im Italienischen[12] die Sensibilisierung der Sprachgemeinschaft auf Geschlechter-bzw. Genderfragen fehlt, weil die Medien „den alten Sprachgebrauch" prägen (zit. nach Hellinger 1990). Es gilt auch für das Italienische, dass bei Personenbezeichnungen mit höherem Prestige die femininen und maskulinen Wortpaare nicht gleichrangig sind, die weibliche Sprachform assoziiert weniger Ansehen (Sabatini 1985). Anstelle der Feminina *avvocata (dt. Rechtsanwältin)* oder *dottrice (dt. Ärztin)* stehen in verschiedenen Textsorten der Medien Bildungen auf *-essa*, einem Suffix mit ausgeprägt pejorativer Konnotation (Hellinger 1990: 119). Dies wird von Hellinger (1990) so kommentiert: „Diese Art der Sichtbarmachung des Femininums bewirkt das Gegenteil von dem, was sprachliche Gleichbehandlung erreichen will, sie betont die Zweitrangigkeit des Femininums." (Hellinger 1990: 120). In vielen Fällen wird aus diesem Grunde die lexikalische Geschlechtsspezifikation gewählt, wenn auf Frau Bezug genommen wird (it. *la donna medico, sindaco donna)*, da diese Form die semantische Abwertung der Frau nicht impliziert.

[11] 1993, *Raccomandazioni per un uso non sessista della lingua italiana* der Presidenza del Consiglio dei ministeri, herausgegeben von A. Sabatini

[12] Das Italienische besitzt zwei grammatische Genera, Maskulinum und Femininum. Es verfügt über eine Reihe femininer Wortbildungsmuster, und es gibt viele gängige Wortpaare wie invitato / invitata (dt. Gast / Gästin), lettore/lettrice (dt. Leser / Leserin) (Hellinger 1985, A világ nyelvei/Fodor 2000)

Auch Sprachen, die systemlinguistisch kein Genussystem aufweisen (wie zum Beispiel das Ungarische[13]), können in bestimmten Fällen (wo der Sexus oder die Genderidentität der Referenzperson für den Ausgang der ganzen kommunikativen Situation eine entscheidende Rolle spiele) auf das Geschlecht der Referenzperson referieren. Im Ungarischen gibt es Lexeme, in denen das Geschlecht sozusagen in der Wortbedeutung mitkonstruiert ist (*ung. apó (dt. alter Mann), ung. anyó (dt. alte Frau*)) und es gibt Lexeme, an denen mit lexikalischen Mitteln das Femininum extra markiert werden kann. In letzter Zeit ist auch im Ungarischen ein verstärkter Gebrauch von femininen Formen zu beobachten, dies bezieht sich aber in erster Linie auf eine Feminisierung im Singular, nur selten kommen feminisierte Formen auch im Plural vor. Auf die sprachliche Erscheinung der Feminisierung im heutigen Ungarischen wurden schon in vereinzelten Studien (Kegyesné Szekeres 2004), aber auch in größeren Untersuchungen, zum Beispiel zum Sprachgebrauch Muttersprachler im Karpatenbecken (Göncz und Kontra 2000). Im Allgemeinen ist in der ungarischen Sprachpflege[14] vorgegeben, dass die lexikalisiert feminine Form von Personenbezeichnungen oder bei der Angabe von Berufen und Titeln als überflüssig gilt, wenn es kontextuell klar ist, dass im Satz oder im Text auf eine Frau referiert wird. Eine Ausnahme bildet der Fall der Anrede, wo lexikalisiert feminine Formen nicht als redundante Elemente gelten. Anders formuliert: die nicht markierten, die generischen Formen sind die Standardformen, wonach sowohl im sprachlichen System als auch im Sprachgebrauch die femininen Personenbezeichnungen eine Abweichung vom Standard bilden. Die

---

[13] Das Ungarische ist eine finno-ugrische Sprache, es kennt kein grammatisches Geschlecht, markiert aber den Sexus vorwiegend mit lexikalischen Mitteln, wie zum Beispiel mit Komposita (ung. nő, asszony, Lexeme, die auch allein stehend sein können und die Bedeutung ‚Frau' tragen) oder zum Beispiel mit dem Adjektiv *női* (dt. *weiblich)*. (s. ausführlich bei Pete 2000)

[14] s. z.B. Nyelvművelő kézikönyv [Handbuch zur Sprachpflege] 1980, Akadémiai Kiadó [Akademischer Verlag]

Untersuchung von Göncz und Kontra (1996, publiziert 2000) hat klar gezeigt, dass der Prozess der Feminisierung auch im Ungarischen Fuß fasste und die lexikalisierten femininen Formen von Personenbezeichnungen, Titeln und Berufen nicht eindeutig als überflüssiges sprachliches Element zu interpretieren sind. Die Daten bezogen sich auf Personenreferenz in Berufsbezeichnungen und die Probanden hatten die Aufgabe, geschlossene sprachliche Testreihen auszufüllen. Die Untersuchung beleuchtete insbesonders, in welchem Verhältnis die sog. markierten und nicht markierten Formen heute im Ungarischen zueinander stehen und welche Sprachform des öfteren benutzt wird. Als Gesamtergebnis lässt sich behaupten, dass in dem heutigen ungarischen Sprachgebrauch die feminisierten Berufsbezeichnungen im Umfeld der Zwei- bzw. Mehrsprachigkeit der ungarisch sprechenden Sprachgemeinschaften außerhalb der Grenzen des ungarischen Staatsgebietes signifikant öfter gebraucht werden. Ein möglicher Grund dafür ist der Sprachkontakt mit Sprachen, die grammatisches Genus haben (Göncz und Kontra 2000). Die in Ungarn lebende, das Ungarische als Muttersprache sprechende Sprachgemeinschaft feminisiert wesentlich weniger, obwohl sich auch in Ungarn eine stärkere Tendenz zur Feminisierung als früher präsent ist.

Anhand von Sprachdaten, die ich den letzten 5 Jahren aus der Presse (Tageszeitungen, wie *Magyar Nemzet* und *Népszabadság*, Frauenzeitschriften wie *Nők Lapja* und *Cosmopolitan*) und aus verschiedenen Gebrauchstextsorten (z.B. Stellenanzeigen, Werbetexte) gesammelt habe. In meinem Beispielinventar sind auch Textteile aus modernen literarischen Werken zu finden. Im Folgenden werden meine Feststellungen zusammengefasst und mit Beispielen[15] erläutert. In Bezug auf die Pressesprache kann festgestellt werden, dass zumeist im politischen Kontext feminisiert wird. Frauen in hohen Ämtern werden sprachlich mit femininen

[15] Ungarischsprachige Belege, wenn keine andere Quellenangabe vorzufinden ist, stammen aus dieser Sammlung.

Formen positioniert. Es darf wahrscheinlich auch mit Recht behauptet werden, dass von männlichen Journalisten mehr feminisiert wird, als von weiblichen. Die männlichen Journalisten konnotieren heutzutage die femininen Formen meistens nicht negativ, was früher noch als typisch galt. Ganz viele Neubildungen lassen sich auch in Texten der kulturellen bzw. populärwissenschaftlichen Textsorten erkennen *(z.B. ung. katonanő (dt. Soldatin), ung. képviselőnő (dt. Abgeordnete), ung. kurátornő (dt. Kuratorin), ung. fotósnő (dt. Bildreporterin, Bildmacherin)).* In vielen Stellenanzeigen lässt sich auch ein Trend zur Feminisierung erkennen, wobei schon auch im Ungarischen immer mehr Splittingformen nach Mustern aus anderen Sprachen (vor allem Englisch und Deutsch) zu identifizieren sind (*ung. „Üzletembe kollégaNőt keresek" / dt. (wortwörtliche Übersetzung) In meinen Laden wird KollegIn gesucht.)* In einigen Stellenangeboten sind Beispiele auch für die Beidnennung zu finden, die im Ungarischen auch als atypisch bezeichnet werden kann (*ung. „Cégünk munkatársakat és munkatársnőket keres az ország egész területéről" / dt. (wortwörtliche Übersetzung) Von unserer Firma werden Mitarbeiter und Mitarbeiterinnen vom ganzen Land gesucht.).* Sehr oft kommen feminine Berufsbezeichnungen in den verschiedenen TV-Zeitungen vor, auch dann, wenn der Name ausschließlich auf eine weibliche Person referiert. Besonders häufig ist das der Fall bei Programmempfehlungen, wo der Inhalt eines Programms kurz zusammengefasst wird (*ung. Miranda, a pszichológusnő (dt. Miranda, die Psychologin), ung. Katrina adószakértőnő (dt. Katrina, die Steuerberaterin,) ung. Júlia, a fényképésznő (dt. Julia, die Photographin)*) Fast genauso viel wird auch in Romantexten feminisiert, die meistens Übersetzungen aus dem Englischen oder Deutschen sind. In diesen Bests~~t~~ellern werden zum Beispiel konsequent die Lexeme in femininer Form benutzt, die die Frauen in nicht typischen Berufsfeldern sehen lassen (*z.B. ung. rendőrnő (dt. Polizistin), ung. nyomozónő (dt. Inspektorin), ung. kémnő (dt. Spionin*). Des Weiteren können feminine Bezeichnungen in den Frauenmagazinen gesehen

werden, die Schwester-Ausgaben von den großen, in ganzem Europa bekannten Frauenmagazinen sind (z.B. *ung. gyakornoknő (dt. Praktikantin), látnoknő (dt. Hellseherin)*).

Diese sprachpraktischen Beispiele implizieren, aus welchen Gründen eine Feminisierungstendenz neulich auch in der ungarischen Sprachpraxis Geltung fand. Einerseits geht es hier um einen Anpassungstrend an den (modischen) europäischen Sprachgebrauch und damit im Zusammenhang auch um die Beachtung sprachlicher Empfehlungen der Europäischen Union, in deren Dokumenten die sprachliche Gleichstellung der Geschlechter exemplifiziert wird. Andererseits ist hier das Problem der Übersetzungen zu erwähnen: vieles wird aus solchen Sprachen in das Ungarische übersetzt, die die Geschlechtsexplikation sozusagen „systeminne" haben, und beim Übersetzen wird der Prozess der sprachlichen Geschlechtsexplikation automatisch übernommen, d.h. in das Ungarische transferiert, mit der Technik der lexikalischen Geschlechtsexplikation. Im Fall der Splittingformen kann es aber auch darum gehen, dass die ausländischen Eigentümer der inserierenden Firmen ihre eigene Sprachkultur für vorrangig halten. Es ist aber auch anzunehmen, dass bei der jüngeren Generation auch deswegen feminisiert wird, weil modische Elemente fremder Sprachkulturen bei den Jugendlichen gerne tradiert werden. Andererseits haben sie schon wesentlich bessere Fremdsprachenkenntnisse als die älteren Generationen und mehrere Möglichkeiten, im Ausland fremde Sprachkulturen kennen zu lernen und auf dieser Weise Traditionen zu importieren.

Feminisierung und Fragen der Selbstpositionierung

In diesem Teil meines Beitrags wird darüber reflektiert, wie sich Frauen selbst bzw. andere Frauen geschlechtlich in Situationen der Berufsangabe benennen. Es wird die Frage gestellt, wie weit das weibliche Potenzial im Umfeld der Selbstidentifikation und der Fremdidentifikation wirklich zu Worte kommt.

Theoretisch gesehen wird dabei auf das gesprächsanalytische Konzept der sozialen Positionierung zurückgegriffen, das Folgendes aussagt: „Wie wir in Interaktionen wahrgenommen werden, ist etwas, das wir und unsere Interaktionspartner stets zu lenken und sorgsam zu behüten suchen. Dabei geht es nicht nur darum, als sympathische, freundliche, witzige, geistreiche Personen usw. zu gelten, sondern als Vertreter bestimmter Kategorien von sozialer Identität." (Wolf 2000: 69) In dieser Arbeit wird die berufliche und andersartige Darstellung durch die Anwendung femininer Sprachformen als eine der sozial positionierenden Kategorien aufgefasst. Eine solche positionierende Aktivität lässt sich bei der Selbstdarstellung erkennen, in der sich Interagierende bestimmte Eigenschaften und bestimmte soziale Rollen, Kategorien, Positionen zusprechen und sich auch sprachlich dementsprechend verhalten.

Rollenzuweisung, Anerkennung der sozialen Position und die Zuschreibung von geschlechtlichen Kategorien erfolgt selbstverständlich auch den Mitinteragierenden gegenüber, also ihnen werden bestimmte Eigenschaften und Rollen von uns und von anderen zugewiesen. Die gesellschaftliche Selbstpositionierung bzw. Fremdpositionierung kann in sprachlicher Hinsicht explizit und implizit verlaufen. Die Positionierung des Geschlechts ist eine explizite Kategoriezuweisung. Die Darstellung des eigenen Berufs- bzw. Tätigkeitsfeldes oder die Darstellung der beruflichen Positionen von Mitmenschen ist ebenfalls eine explizite sprachliche Handlung. So steht die Rolle der Frau sowohl im Kontext der Selbstpositionierung als auch im Kontext der Fremdpositionierung unter dem Druck eines doppelten Potenzials. Wenn eine Frau ein Gespräch mit der Behauptung beginnt „*Ich als Linguistin würde behaupten* (…)", positioniert sie sich einerseits aus dem Blickwinkel ihrer Berufswelt, andererseits aber auch im sozialen Kontext der Geschlechter. Anders formuliert: *unter den Linguisten* thematisiert sie sich als *ein weiblicher Linguist*, und diese gesprächseröffnende Behauptung von ihr kann den weiteren Ablauf des Gesprächs weitgehend beeinflussen.

Was kann durch die Benutzung bzw. Nicht-Benutzung femininer Ausdrücke positioniert werden?

(1) *Weibliches Selbstverständnis*: Für die deutschsprachige feministische Sprachkritik versteht sich die Feminisierung von Berufsbezeichnungen, Titeln und Graden als eine weibliche Selbstständigkeit, als eine zentrale Frage der weiblichen Identifikation. Titel und Berufsfeld „sagen nicht nur etwas über die ausgeübte Tätigkeit, sondern sind in hohem Maße auch Identifikationsmittel, ähnlich wie der Name einer Person Teil der Person selbst ist“ (Schoenthal 1998: 13). In diesem Sinne darf zum Beispiel der Unterschied im feminisierenden bzw. nicht-feminisierenden Sprachgebrauch zwischen den alten und neuen Bundesländern in Deutschland nicht nur als ein simpler Sprachgebrauchsunterschied interpretiert werden. Im Hintergrund stehen Auffassungs- bzw. Weltanschauungsunterschiede von Frauen im Osten und Westen[16]. Die ostdeutschen Frauen mussten andere Erfahrungen als Frau gemacht haben, als die westdeutschen Frauen, wonach sie auch den Emanzipationsbegriff anders interpretieren. Ihre anderen Wirklichkeiten repräsentierten die ostdeutschen Frauen auch in ihrem Sprachgebrauch: sie bevorzugten die generischen Formen, als Symbol der Gleichstellung[17]. Es ist eine andere Frage,

---

[16] Sogar männlichen Professoren ist es aufgefallen, dass sich Studentinnen im Westen selten mit femininen Bezeichnungen positionieren: *„Die aus dem Westen importierten Lehrenden und auch ich waren entsetzt, als die Studentinnen von sich beinahe ausschließlich in männlicher Form sprachen. Drei Frauen (…) bezeichneten sich als "Studenten", waren "Kindergärtner", "Erzieher" und wollten "Sozialarbeiter" werden." (Zitiert aus Erfahrungsbericht eines westdeutschen Professors, aus dem Buch Kulturschock in Deutschland 1996, s. auch* www.sadaba.de/Anm/GSLA_Thesen.html).

[17] Der Verfasser des oben zitierten Erfahrungsberichts kommentiert: *„Oft hatte ich den Eindruck, daß insbesondere die Studentinnen die männliche Form sogar demonstrativ einsetzten, als ob sie damit ihre Ost-Identität verteidigen wollten (…). In Gesprächen kam heraus, daß die Ostfrauen der Ansicht waren, sie hätten viel mehr wirkliche Emanzipation, an gleichberechtigter Teilhabe an der Gesellschaft erreicht, hätten sozusagen "ihren Mann gestanden", und dies drücke sich eben auch in ihrer Sprache aus, in der sie demonstrieren, daß sie in gleicher Funktion und gleicher Leistung wie die Männer in der Gesellschaft gestanden hätten“. (Fortsetzung des Zitats von oben)*

was diese „Gleichstellung“ in der sozialistischen Ära in der Wirklichkeit bedeutete.

(2) *Bekenntnis zum Feminismus*: Nach aktuellen Beobachtungen einer Leipziger Germanistikstudentin benutzen junge Frauen im Osten immer noch häufiger das generische Maskulinum in Selbstpositionierung (z.B. „*Ich bin Jurist.*“), während junge Frauen im Westen sich in ähnlichen Sprachsituationen oft aus einer feministischen Perspektive positionieren und sagen „*Ich bin Juristin*“ (http://www.latnrw.de/artikel69/html). Die Verfasserin einer Seminararbeit an westdeutschen Universitäten positioniert sich als *Autorin* des Textes, während von Studentinnen aus östlichen Bundesländern vorwiegend *Autor* zur Selbstpositionierung gewählt wird. In diesem Sinne kann die Benutzung von femininen Sprachformen in Situationen der Selbst- und Fremdpositionierung auch ein Bekenntnis zum Feminismus ausdrücken.

(3) *Gruppenzugehörigkeit sowie Befolgung von sprachlichen Trends*: In den 90-er Jahren signalisierte aber zum Beispiel in Österreich die aktive Verwendung des Splittings eher eine Ingroup-Zugehörigkeit als die Absicht zur sprachlichen Gleichstellung der Geschlechter (Doleschal 1998). Die aktive Benutzung von Beidnennungen im individuellen Sprachgebrauch kann auch dafür ein Zeichen sein, dass Sprechende „up to date“ sein möchten oder ganz einfach mit modernen sprachlichen Erscheinungen Schritt halten möchten.

(4) *Identitätssuche und Selbstbewusstsein*: Schon im Jahre 1984, in einer Debatte der französischen Sprachpolitik über die Auswirkung der Feminisierungstendenz hat Benoit Groult festgestellt, dass auf legislativer oder institutioneller Ebene den Frauen nicht zu helfen sei, eine Änderung im Bereich der Sprachverwendung liege ausschließlich in den Händen der Frauen, da sie „selbst den Mut haben müssen, feminine Bezeichnungen für sich in Anspruch zu nehmen“ (zit. nach Burr 1998). Die bewusste Bevorzugung femininer Formen drückt den Standpunkt der selbstbewussten Frau aus.

(5) *Prestigeverlust*: Im Zusammenhang mit dem französischen Sprachgebrauch wird immer wieder hervorgehoben, dass bei der Sprachrezeption die maskulinen Sprachformen als *genre plus noble* Geltung finden, d.h. Tätigkeiten mit maskulinen Sprachformen assoziiert man mit einem höheren sozialen Status und größerem Prestige (Burr 1988). Hartmann-Brockhaus (1986) behauptete auch, dass der Hauptgrund für die Nicht-Verwendung femininer Berufsbezeichnungen in Selbstpositionierung darin liegt, dass die maskuline Form mit einem höheren sozialen Stellenwert verbunden ist. Untersuchungen[18] haben gezeigt, dass auch im Italienischen Frauen in höheren Posten in der Selbstpositionierung maskuline Bezeichnungen vorziehen, das sie die sprachlich-soziale Abwertung der Frau durch Abwertung implizierende Feminina nicht selber praktizieren möchten.

(6) *Repro-Feminismus*: Im Ungarischen kann die Nicht-Benutzung femininer Formen in Selbstpositionierung politische Gründe haben. Natürlich wollen vor allem die Frauen der mittleren und älteren Generation allen Anschein vermeiden, dass es um einen Repro-Feminismus der sozialistischen Ära gehen könnte, wo die fast obligatorische sprachliche Favorisierung femininer Formen in Berufsbezeichnungen und Titeln die gesellschaftliche Gleichstellung der Frau als eine Errungenschaft des Sozialismus zu symbolisieren hatte.

(7) *Negative Konnotation und negative Assoziationen*: Auch im Ungarischen können zum Beispiel in bestimmten Situationen und Kontexten feminine Formen mit negativer Konnotation verbunden werden. Die ungarischsprachige Bezeichnung „*kollegina*" (dt. *Kollegin*) kann auch negativ konnotiert sein, zum Beispiel in beruflichen Situationen, wobei nicht das berufliche Können einer Frau betont wird, viel mehr wird ein Verweis auf ihr Geschlecht kommunikativ expliziert.

---

[18] s. bei Marcato G., (1988) Italienisch: Sprache und Geschlechter. Lingua e sesso", in Holtus Guenter et al. (eds.), Lexikon der Romanistischen Linguistik, vol IV, Italienisch, Korsisch, Sardisch, Tübingen, Niemeyer 1988, 237-246.

(8) *Feministin zu sein, ist ein böses Omen*: Wenn zum Beispiel eine ungarische Frau sich als Feministin positioniert, setzt sie sich tiefer gesellschaftlicher Verachtung aus. Im Jahre 2000 wurde von mir eine Untersuchung[19] mit Teilnahme von 130 Lehrerinnen durchgeführt, deren Ergebnis war, dass das sprachliche Bewusstsein mit dem Identitätsbild der ungarischen Lehrerinnen nicht korreliert. Von allen Befragten gaben 88% in der Umfrage die Antwort, dass sie sich in der Situation der Selbstdarstellung als *Lehrer* vorstellen, feminine Formen bewusst vermeiden, aber generische Bezeichnungen auch nicht gerne benutzen, eher eine neutrale Umschreibungskategorie zur Selbstpositionierung wählen wie *„ich unterrichte"*. Feminine Formen werden meist mit der Begründung vermieden, dass diese in der ungarischen Gesellschaft oftmals das Bild einer wilden Feministin assoziieren, und die Lehrerinnen wollen nicht für Feministinnen gehalten werden. Es kann damit erklärt werden, dass in Ungarn im Zusammenhang mit dem Feminismus immer noch viele Stereotype, Irrtümer und Vorurteile verbreitet sind, die die mit feministischen Ansätzen sympathisierenden Frauen stigmatisieren und sie als Ebenbild des Männerhasses darstellen.

Feminisierung und Fragen der Fremdpositionierung

In psycholinguistischer Hinsicht geht es hier über die Wahrnehmung von Sexus/Gender in geschriebener oder gesprochener Sprache in referenziellen Situationen, in denen von anderen auf uns referiert wird. Ab den 90-er Jahren fokussiert die Geschlechterforschung auf die Frage, „welchen Einfluss das Lesen oder Hören von verschiedenen Personenreferenzformen auf die Wahrnehmung von Individuen hat und welche Wirkungen infolge dessen entsprechende Richtlinien haben und haben können" (Hornscheidt 2000: 279). Um über diese komplexe Fragenstellung mehr erfahren zu können,

[19] Die Ergebnisse meiner Untersuchung habe ich 2000 im Rahmen der Konferenz „Gender und Pädagogik" (veranstaltet von der Eötvös Loránd Universität, Fakultät für Lehrerausbildung Budapest) erörtert.

wurden verschiedene systematische Tests in verschiedenen Sprachen durchgeführt oder ganz einfach Beobachtungen notiert.

Im englischen Sprachraum wurde zum Beispiel intensiv nachgeforscht, auf wen bei der generisch verwendeten Form des Personalpronomens 3. Person Singular (*he*) in verschiedenen Situationen der Alltagskommunikation assoziiert wird. In fast allen Tests wurde das Ergebnis verzeichnet, dass im Fall maskuliner generischer Referenzformen vorwiegend auf männliche Nomina agensis assoziiert wird, und nur in einer viel geringeren Anzahl auf weibliche Nomina agensis (s. ausführlicher bei McKay 1993).

Die Debatte im Deutschen Bundestag über die Gleichbehandlung von Männern und Frauen in Gesetztexten im Jahre 1987 wird heute schon anekdotenhaft zitiert: die Ministerin Rita Süssmuth weigerte sich, die Verordnung *zum Arzt im Praktikum* zu unterschreiben, mit dem Argument, dass Frauen sich nicht angesprochen fühlten, wenn Maskulina verwendet werden. (Ganz abgesehen davon, dass nur ein weiblicher Arzt schwanger sein kann.). So wurde die Passage *„Wenn der Arzt im Praktikum schwanger wird, hat er Urlaub nach Regelungen des Mutterschutzgesetztes; nach Inanspruchnahme des Erziehungsurlaubs kann er seine Ausbildung fortführen"* gestrichen, und des Weiteren über Ärztinnen im Praktikum gesprochen (Samel 2000: 102-3). Zum anderen könnte zum Referenzbereich der neutralen Sprachformen auch gefragt werden: *„Warum sollte man über ‚schwangeres Lehrpersonal' reden, wenn es nur ‚schwangere Lehrerinnen' gibt*? (http://www.latnrw.de/artikel69/html)

Viele Jahre später wurde auch im ungarischen Parlament die gesetzliche Regelung der zur Verfügung stehenden Urlaubstage von Ärzten diskutiert. In diesem Kontext drückten viele aus, dass sie solche Formulierungen wie *az orvos terhessége esetén*[20] nicht mit gutem Gewissen akzeptieren können (Huszár 2001). Das

[20] Der zitierte Ausdruck ist ungarischsprachig und bedeutet in wortwörtlicher Übersetzung: im Fall des Schwangerseins des Arztes

ungarischsprachige Lexem *orvos* (*dt. Arzt*) referiert in seiner Funktion eigentlich sowohl auf weibliche als auch auf männliche Ärzte, weil in Sprachen, die mit keinem grammatischen Geschlecht (Genus) operieren, auf beide Geschlechter mit generischem Maskulinum zu referieren ist. Trotzdem wirkt der vorher erwähnte speziell referierende Fall für die ungarischsprachigen Muttersprachler unakzeptabel, da das Lexem (*ung. orvos, dt. Arzt*) in einem sprachlichen Kontext steht, wo es natürlicherweise nur auf eine Teilmenge aller zum Referenzbereich gehörenden Personen referieren kann (Huszár 2001).

Um auch solche kommunikativen Zwickmühlen zu vermeiden, werden die femininen Bezeichnungen zum Beispiel im Französischen für die Bezeichnung der individuellen, selbstbewussten Frauen in höheren Positionen immer häufiger verwendet, vor allem in den Medien und in der Politik, „sind aber jedoch noch lange nicht so allgemein verbreitet wie die Formen auf – in im deutschen Sprachgebiet, besonders nicht in der Umgangssprache“ (Lutjeharms 2004: 200). Im öffentlichen Sprachgebrauch ist also die französische Frau sichtbarer gemacht, als im privaten Sprachgebrauch, d.h. im Französischen wird eher in formellen sprachlichen Situationen mehr feminisiert als in informellen Situationen des Sprachgebrauchs.

Dagegen ist zurzeit im Ungarischen zum Beispiel eine Tendenz in informellen Situationen des Gesprächs zu beobachten, wo vor allem die Frauen bei der sprachlichen Positionierung anderer Frauen feminine Formen wählen. In einigen Privatgesprächen, an denen ich teilnahm, wurde ich zum Beispiel auf die folgenden femininen Formen aufmerksam: *parasztnő (dt. Bäuerin), papnő (dt. Pfarrerin), publicistanő (dt. Publizistin), pedagógusnő (dt. Pädagogin), olvasónők (dt. Leserinnen), oktatónők (dt. Ausbilderinnen)*. Diese femininen Bildungen mit movierter Lexikalisierung (im Ungarischen mit dem lexikalischen Suffixoid – *nő,* das als allein stehendes Lexem die Bedeutung *Frau* trägt) sind als Neubildungen zu bezeichnen, die nur noch sporadisch auftreten und von vielen ungarischsprachigen

Muttersprachlern als systemfremde Bildungen empfunden werden könnten, jedenfalls im Vergleich zu solchen gängigen und weitaus akzeptierten Formen der Feminisierung in Fremdpositionierung wie *jogásznő (dt. Anwältin), bírónő (dt. Richterin), tanárnő (dt. Lehrerin)*. Typische Frauenberufe wurden und werden aber auch im Ungarischen traditionell mit femininen Formen bezeichnet (*ung. takarítónő (dt. Putzfrau), ung. varrónő (dt. Näherin)*, diese Berufsfelder besitzen aber gesellschaftlich kein hohes Prestige. In dieser Hinsicht unterscheidet sich im sprachlichen Prozess das Ungarische nicht von anderen europäischen Sprachen. Aber bei der Bezeichnung von Frauen, die gesellschaftlich hoch angesehene Berufe ausüben, ist über einen Unterschied zum sprechen. Im Vergleich zur französischen oder italienischen Sprachkultur war und ist im Ungarischen ein sprachkulturelles Phänomen stilistisch angebracht, wonach Frauen mit hohen gesellschaftlichen Positionen mit Feminina zu bezeichnen sind. Das gilt für viele Bereiche der Kommunikation und nicht nur für den speziellen Fall der Anrede. Zum Beispiel wurden und werden die Sportlerinnen, Künstlerinnen und Schauspielerinnen im Allgemeinen sowohl in der Schriftsprache als auch in der gesprochenen Alltagssprache seit den 60-er Jahren bis heute konsequent mit femininen Formen benannt.

In meiner Umfrage (1999) im Kreis der ungarischen Lehrerinnen wollte ich detaillierter nachfragen, wie weit die ungarischen Frauen ihre Bezeichnung mit femininen Formen akzeptieren. Dabei stellte es sich heraus, dass 63% aller befragten Lehrerinnen ihre sprachliche Situation als benachteiligt empfinden. Interessanterweise aber nicht in systemlinguistischer Hinsicht, sondern eindeutig pragmatisch. Für die Benutzung von femininen oder generischen Berufsbezeichnungen zeigen sie weniger Interesse als für die pragmatischen Fragen der sprachlichen Gleichstellung wie Fragen des Rederechts, von Überlappungen und Unterbrechungen. Diese stellen auch für sie ein aktuelles frauenpolitisches Thema dar. 58% der Befragten äußerten, dass sie die Benutzung von femininen Formen in Fremdpositionierung abweisen, obwohl sie die Bildung

neuer femininer Formen auch für wichtig halten. Sie sind mit der Benutzung femininer Bezeichnungen eher einverstanden, wenn in der aktuellen sprachlichen Situation das Frausein einer Frau besonders akzentuiert werden soll. Keineswegs setzen sie sich für die Benutzung femininer Bezeichnungen ein, wenn die Frau dadurch in ihrer fraulichen Beschaffenheit oder in ihrem Tätigkeitsfeld stigmatisiert wird. Wie paradox aber die gesellschaftliche Akzeptanz von femininen beruflichen Bezeichnungen ist, zeigt, dass die Lehrerinnen durchaus erwarten, nicht nur im Fall der Anrede als *Lehrerinnen* bezeichnet zu werden. Es könnte damit im Zusammenhang stehen, dass gerade der Beruf der befragten Frauen einer der typischerweise von Frauen ausgeübten und gesellschaftlich auch angesehenen Berufen ist.

Für oder gegen die Akzeptanz femininer Formen kann vieles sprechen: die allgemeine gesellschaftliche Akzeptanz femininer Formen und all die gesellschaftlichen und politischen Assoziationen sowie Konnotationen, die ihren Gebrauch beeinflussen, können dabei mitwirken, ob die femininen Formen bei der Fremdpositionierung angenommen oder abgelehnt werden. Hinzukommen Faktoren wie das eigene Geschlecht, das Alter, die soziale oder Bildungslage und nicht zuletzt Vorkenntnisse über Geschlechterfragen sowie die eigene Haltung dürfen nicht außer Acht gelassen werden.

Zusammenfassung

In der Sprache und im Sprachgebrauch spiegelt sich die gesamtgesellschaftliche Haltung den Geschlechtern gegenüber. Die Sichtbarmachung der Frau in der Sprache ist aber in ihrem gesellschaftlichen, soziokulturellen und sprachlichen Kontext in den einzelnen Ländern Europas jeweils anders konstruiert, obwohl auch eine allgemeine, länder- und sprachenübergreifende Tendenz zur Sichtbarmachung der Frau in der europäischen Sprachkultur sichtbar ist. Bei der Sichtbarmachung der Frau wirken aber meistens zwei kategoriale Komponenten der weiblichen Identität stark

gegeneinander. Das zeigen sowohl die aus mehreren Sprachen zitierten Sprachbeispiele als auch die landes- und sprachenspezifischen Untersuchungen.

Wenn es um die *Sexuskategorie Frau* als Bedeutung tragendes Element geht, wird der weibliche Sexusmarker auch sprachlich sichtbar. Wenn es um die *soziale Kategorie Frau* geht, haben es wir mit einem historisch-sozialen Konzept zu tun, wobei die Sexuskategorie eine nebengeordnete und keine markante Bedeutung (mehr) trägt. In diesem Fall bleibt die *sprachliche Kategorie Sexus* auch sprachlich unmarkiert, selbst die Frauen positionieren sich in solchen sprachlichen Situationen unmarkiert (generisch). Wo die beiden Spezifikationen (*Sexusmarker und soziale Positionierungsmarker*) zusammenfallen, d.h. in der Interaktion beide Kategorien Bedeutungsträger sind, wird ebenfalls eine feminine Form benutzt, meistens sowohl in der Selbst- als auch Fremdpositionierung.

So ist zu schlussfolgern, dass die *sprachlich-soziale Kategorie Frau* meistens keine explizit sexusmarkierende Kategorie ist, während die *sprachlich-sexusorientierte Kategorie Frau* Sexus explizit markiert. Wenn zwischen diesen zwei Kategorien im Bewusstsein der Sprechenden oder in der Sprachkultur eine Diskrepanz besteht, kann es vorkommen, dass die Sprachformen der Selbstpositionierung mit denen der Fremdpositionierung auch in Diskrepanz stehen. In manchen Sprachgemeinschaften und Kulturen nähern sich die beiden Kategorien an, gehen ineinander fließend überein, und konstruieren gemeinsam (wenn auch in verschiedener Größe) eine Genderidentität, in der Sexusmarker und soziale Marker wie zum Beispiel ein solcher wie der Beruf als bedeutungs- und sinngebende Kategorien auftreten. Es kann hier in diesem Fall angenommen werden, dass in diesen Sprachgemeinschaften sprachlich sowohl von den Frauen und auch von den Männern auch mehr feminisiert wird. In Sprachgemeinschaften und Kulturen, in denen sich wegen ihrer verschiedenen gesellschaftlichen und wirtschaftlichen Entwicklungsformen die beiden konstitutiven Elemente des Frauseins (Sexusmarker und soziale Positionierung)

noch keine fließenden Kategorien bilden, sondern sich erst auf dem Wege befinden, *Genderidentität-bildende Kategorien* zu werden, wird wahrscheinlich auch weniger intensiv feminisiert. Es kann auch angenommen werden, dass in diesen Sprachgemeinschaften in Zukunft mehr feminisiert wird und die Tendenz zur Feminisierung heftige gesellschaftliche und linguistische Diskussionen hervorrufen wird.

Im Sinne dieser Interpretationsmöglichkeit sprachlich femininer Formen sollten all die pro und contra Meinungen zur sprachlichen Feminisierungstendenz neu rezipiert werden, um einzusehen, dass es hier wirklich um mehr geht als um eine feministische Modenwelle im sprachlichen Ausdruck. Dies auch in Sprachen, die gar kein Genus kennen. In Zukunft können diese Sprachen möglicherweise ein *lexikalisches Geschlecht* entwickeln.

Literatur

1. *A világ nyelvei*. (Főszerk. Fodor István) 2000. Budapest: Akadémiai Kiadó. [Die Sprachen der Welt. (Redaktionsleitung von István Fodor)]
2. Braun, F. & Gottburgsen, A. & Sczesny, S. Stahlberg, D. 1988. *Können Geophysiker Frauen sein*? Zeitschrift für germanistische Linguistik. 26, 265-283.
3. Bühlmann, R. 2002. *Ehefrau Vreni haucht ihm ins Ohr… Untersuchung zur geschlechtergerechten Sprache und Darstellung von Frauen in Deutschschweizerischer Zeitungen.* Linguistik online 11, 2/02. www.linguistik-online.de/11/02/buehlmann.html
4. Burr, E. 1998. *Selbstverständnis der Frauen und französische Sprachpolitik*. Linguistik online 1, 1/98. www.linguistik-online.de/99/burr.html
5. Bussmann, H. (Hg.) 2002. Lexikon der Sprachwissenschaft. Stuttgart: Kröner Verlag.
6. Doleschal, U. 1998. *Entwicklung und Auswirkungen der feministischen Sprachkritik in Österreich seit 1987.* In: Schoenthal, G. (Hg.) Feministische Linguistik – Linguistische

Geschlechterforschung. Hildesheim, Zürich, New York: Georg Olms Verlag. 87-116.

7. Doleschal, U. 2002. *Das generische Maskulinum im Deutschen.* Linguistik online 11, 2/02. www.linguistik-online.de/11/02/doleschal.html
8. Gönz, L. & Kontra, M. 2000. *„Feminizálás a kárpát-medencei beszélőközösségek nyelvhasználatában.* Modern Filológiai Közlemények. II./2. 83-96. [„Feminisierung im Sprachgebrauch der Sprachgemeinschaften im Karpaten-Becken, Moderne Philologische Mitteilungen II./2.]
9. Greve, M. & Iding, M. & Schmusch, B. 2002. *Geschlechtspezifische Formulierungen in Stellenangeboten.* Linguistik online 11, 2/02. www.linguistik-online.de/11/02/greschmid.html
10. Hartmann-Brockhaus, K. 1986. *Madame le ministre – Die Verrenkung der französischen Sprache bei weiblichen Berufsbezeichnungen*. Studium Feminale. Bonn: Arbeitgemeinschaft Frauenforschung der Universität Bonn. 252-264.
11. Hellinger, M. (Hg.) 1985. *Sprachwandel und feministische Sprachpolitik: Internationale Perspektiven*. Opladen: Westdeutscher Verlag.
12. Hellinger, M. 1990. *Kontrastive feministische Linguistik. Mechanismen sprachlicher Diskriminierung im Englischen und Deutschen*. Ismaning: Hueber.
13. Hellinger, M. 2000. *Feministische Sprachpolitik und politische Korrektheit – der Diskurs der Verzerrung*. In: Eichhoff-Cyrus M., K. & Hoberg, R. (Hg.) Die deutsche Sprache zur Jahrtausendwende. Mannheim, Leipzig, Zürich, Wien: Dudenverlag. 177-191.
14. Hornscheidt, A. 2000. *Gender-Studien in einzelnen Disziplinen. Linguistik*. In: Braun, von Ch. & Stephan, I. (Hg.) Gender Studien. Stuttgart, Weimar: Metzler. 276-289.
15. Huszár Á. 2001. *A nyelvtani nem a mentális lexikonban*. Modern Nyelvoktatás. VII/4. 31-38. [Das Grammatische Geschlecht im mentalen Lexikon, Moderner Sprachunterricht VII/4.]

16. Kegyesné Szekeres Erika. 2004. *Nők és nyelvhasználati kérdések az Európai Unióban*. In: Bakonyi, I. & Nádai, J. (ed.) A többnyelvű Európa. Győr: Széchenyi István Egyetem. 315-323. [Frauen und Sprachgebrauchsfragen in der Europäischen Union, In: Das mehrsprachige Europa]
17. Leiss, E. 1994. *Genus und Sexus. Kritische Anmerkungen zur Sexualisierung der Grammatik*. Linguistische Berichte, 152. 281-300.
18. Lorenz, D. 1991. *Wider die sprachliche Apartheid der Geschlechter. Anmerkungen zu einer feministischen Mode*. Muttersprache, 101, 272-277.
19. Lutjeharms, M. 2004. *Bildung und Verwendung femininer Formen im Deutschen, Englischen und Französischen und Niederländischen: ein Vergleich*. In: Eichhoff-Cyrus, K. M. (Hg.) Adam, Eva und die Sprache. 191-208.
20. Mckay, D. G. 1993. *Perspective grammar and the pronoun problem*. In: Kramarae, Ch. et al. (ed.) Language, Gender and Society. London: Rowéey. 38-53.
21. Pete, I. 2000. *Férfinyelv-e a magyar?* Magyar Nyelvőr, [Ist das Ungarische eine Männersprache? Ungarischer Sprachwart] www.c3.hu/~nyelvor/period1241/124110.html
22. Peyer, A. & Wyss E. L. 1998. *"JazmuskerInnen – weder Asketen noch Müsli-Fifis" – Feministische Sprachkritik in der Schweiz, ein Überblick*. In: Schoenthal, G. (Hg.) Feministische Linguistik – Linguistische Geschlechterforschung. Hildesheim, Zürich, New York: Georg Olms Verlag. 117-154.
23. Sabatini, A.1985. *Occupational titles in Italian: Changing the sexist usage*. In: Hellinger, M. (ed.). *Sprachwandel und feministische Sprachpolitik*. Internationale Perspektiven. Opladen: Westdeutscher Verlag. 64-75.
24. Samel, I. 2000. *Einführung in die feministische Linguistik*. Berlin: Erich Schmidt Verlag.
25. Schlafroth, E. 1993. *Berufsbezeichnungen für Frauen in Frankreich – Sprachpolitische Maßnahmen und sprachliche Wirklichkeit*. Lebende Sprachen. 38/2, 64-66.

26. Schoenthal, G. 1998. *Von Burschinnen und Azubinnen. Feministische Sprachkritik in den westlichen Bundesländern*. In: Schoenthal, G. (Hg.) Feministische Linguistik – Linguistische Geschlechterforschung. Hildesheim, Zürich, New York: Georg Olms Verlag. 9-32.
27. Trempelmann, G. 1998. *Leserinnen/LeserInen Ost wie West. Zu Bezeichnungen und Anredeformen in den östlichen Bundesländern*. In: Schoenthal, G. (Hg.) Feministische Linguistik – Linguistische Geschlechterforschung. Hildesheim, Zürich, New York: Georg Olms Verlag. 33-48.
28. Trudgill, P. 1999. *Bevezetés a nyelv és a társadalom tanulmányozásába*. [ins Ungarische übersetzt von Klára Sándor]. Szeged: JGYTF Kiadó.
29. Wolf, R. 2002. *Soziale Positionierung im Gespräch*. In: Kallmeyer, M. (ed.) Gesprächsrhetorik. Mannheim: Institut für Deutsche Sprache. 68-94.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

FORUM

NOWADAYS PROBLEMS OF SOMALIA. A BRIEF OVERVIEW

Bogdan Lucian*

Abstract
La démarche de l'article "Les problèmes de la Somalie de nos jours: une brève exposition" est d'offrir le lecteur une image sur les périls d'un peuple qui a tant subi dans les dernières quatorze années. Après avoir crayonné d'une manière schématique les principaux traits de ce pays, je me suis dédié à la question des clans de Somalie, l'un des facteurs essentiels dans le déclenchement des hostilités. De plus, l'esprit guerrier des Somaliens est une chose qu'il ne fallait pas manquer. En suite, on présente la conséquence la plus prononcée de la guerre civile, l'atomisation de l'Etat en trois entités quasi-étatiques, mais sans reconnaissance internationale et, pratiquement, avec des appareils institutionnels hors service. Comme d'ailleurs est le gouvernement légitime de la Somalie et son parlement réfugié dans la Kenya voisine. Heureusement, la communauté internationale collabore avec le président élu du pays pour restaurer l'ordre et la stabilité interne et des espoirs s'entrevoient. J'ai considéré enfin de jeter un clin d'œil sur l'état économique et des utilités du pays, afin que le lecteur comprenne mieux la nature et les nuances des problèmes de la Somalie.

It is wide-known that the people of Somalia, the Easternmost country of the Horn of Africa (ranging about 637,000 sq. kilometers, therefore larger than France, for instance), and bordering the Gulf of Aden and the Indian Ocean, have experienced a series of horrific grievances since the early 1990s.

---

* Bogdan Lucian is M.A. student at the Faculty of European Studies, Babeş-Bolyai University of Cluj

These were caused by the civil war that followed the *coup* which caused President Siad Barre to flee the country and ranged from famine, disease and the lack of shelter for hundreds of thousands of refugees to deliberate genocides, perpetrated by the warlords.

It is alleged that more than 600,000 Somalis (out of a population of 8.3 million) perished from causes related to the war between factions supporting Ali Mahdi Muhammad and, respectively, General Mohamed Farah Aydiid, until the latter's death, in 1996.

The various international interventions (UNOSOM I, UNITAF, UNOSOM II) were unable to settle the dispute but, nevertheless, provided to a certain degree humanitarian relief for the hard-tried population. Estimates indicate that a quarter million lives were thus saved.

But if only this were over: the Somali people being divided on a tribal basis (there are six main genealogic offsprings of the mythic father of the nation, Samaal; of these six branches, four divide even further, leading to a series of no less than 21 clans), it is virtually impossible for citizens of two rival clans to live in peace with each other, especially if they are neighbors. As Gerald Hanley points it out, rival clans are engaged in practically never-ending feuds, which are over only when one of the contenders perishes. Let us not forget that *Hrun sheg!*, the Somali battlecry, meaning "now die!" and preceding the warriors' engagement in ferocious melees, is virtually never absent whenever a dispute occurs.

Undoubtedly, throwing oneself in combat requires that one has access to a sufficient stock of weaponry. And this is definitely Somalia's case, where small arms abound and are easy to procure. However, nowadays virtually no new weapons enter the country and the UN Volunteeers' efforts of micro-disarmament prove successful to a significant degree (many clan leaders agreed to surrender their weapons in specialized centers, established by the UNV), meaning that violence will be brought to a halt in the not-so-

distant future. Nevertheless, there still exist weapons, owned by several (fortunately not more) refractory warlords, who despise the peace-making process, mean that many Somalis will suffer grief injuries until then.

We have evoked the general, probably best-known aspects; now let us go deeper into the Somali world. At first, let us remind the reader that speaking nowadays of Somalia is some kind of barbarianism, almost as would be speaking of Czechoslovakia, Yugoslavia or the USSR.

Note that I use the term "almost" as, unlike the case of these former Communist states which gave birth to a series of new, widely accepted nation-states, Somalia atomized itself into three statelike entities, i.e. Somaliland (roughly the territory of the former British colony, capital at Hargeisa; it has cast its own currency, the Somaliland Shilling), Puntland (the largest entity, over 300,000 kilometers – an area covering half of the former state, but still having territorial claims upon the neighboring entities; its capital is at Boosaaso) and Southwestern Somalia, practically the remainder of former Somalia, capital at Mogadishu (*the Mog* in the slang of the military, not only of Task Force Ranger, but even since the British faced il Duce's troops).

Southwestern Somalia claims to be the only representative of all the Somalis; moreover, this is also the internationally accepted point of view, as Somaliland and Puntland lack international recognition and acceptance at the UN, which struggle to re-settle situation in the ancient terms.

However, the future of these entities is uncertain, as Puntland representatives asserted they would rejoin the mainland would the internal situation become more stable and reconciliation efforts would yield. This may be read as a generous offer, but also as a proposition leading nowhere: the situation cannot get any more stable with three entities exercising sovereign prerogatives instead of one; and reconciliation efforts cannot yield because *they* are the very ones maintaining claims over where the borderline ought to be

settled. Or to put it more plainly: we commit ourselves to do all the necessary efforts, but we do our best not to start fulfilling our commitment.

Another problem would be the fact that there is practically no stable, legitimate government for Somalia: Mogadishu is nothing but the *de jure* capital, but by no means the seat of the political regime. Somalia (as a whole, disregarding secessionist entities) has a Parliament, but whose sessions take place in neighboring Kenya. Speaking of this, Nairobi is the place where on October 10th 2004 the Somali Parliament elected the eighth (and fourth since the beginning of the Civil war) President of the country, Abdulqawi Yusuf. He replaced another exilee in office, Abdiqasim Salad Hassan, who had formally ruled since august 2000 from Djibouti.

However, Mr. Yusuf has admitted that he, as President, is in the impossibility of exercising his prerogatives and lacks any hope in regaining them, naming Somalia a *failed state*. Responsible for this state of affairs are, in his view, not only the war-prone clan leaders, but also a series of warmongers, business allies of the warlords, who finance the former in exchange for them being allowed to control virtually the entire national economy, because, yes, it is possible to get wealthy in the second poorest nation of Africa.

Fortunately, the 60th anniversary of the UN brings a glimpse of hope upon the Somalis: more help was promised through the voice of the American Undersecretary of the State, Donald Yamamoto: it was stated that there would be not merely (meaning restricting to, not that this kind of aid would be of lesser significance) humanitarian help, but also assistance and counsellation for the establishment of a functional government; for the near future, there are provisions of the enactment of more severe coercive measures against the perpetrators of violence; an international commission of inquiry against genocides will be established and the warlords' off-shore accounts, frozen.

Acting on a second "battlefield", the Somali speaker of the house, Shariff Hassan Sheikh Adan, met September the 14th 2005 Mr.

Yamamoto and committed that the Parliament would do its very best to negotiate the warlords the cease of manifest violence. This is an excellent "carrot-or-stick" approach of the problem, first threatening, then offering an amiable settlement, which has high odds of proving successful. Let it be like this.

The cease of violence would be a great relief for Somalia, but this would not be the end of people's distress: the annual GDP per capita of $600 in 2004, though much higher than in 1993, the bitterest year of the civil war, when it had dropped to $36, is still an extremely low one: only $1.643 per day, that is 82.5% of the $2 per day - the World Bank threshold for poverty. And even though the situation can ameliorate, this definitely will not be in a spectacular manner, as 71% of the population works in agriculture, most of them being pastoral nomads and, among the rest, skilled laborers are scarce. One of the best-known produce is fig liqueur, which Somalis (practically in disregard with Islam) often consume as a substitute for both food and water (both being often unavailable), with detrimental effects on their labor capacity, but with stimulating ones in the field of violence-proneness.

Somalia is also deficient in infrastructure: the country *does not have* any railroad system, the road network dating back to the colonial rule has scarcely been maintained ever since and out of 60 airfields, only 10% have paved runways. Fortunately (from this single point of view) the climate is extremely dry.

And speaking of water, let us note that the internal renewable water resources per capita are only 628 cubic meters, that is 9.1 times lower than the Sub-Saharan average. With Somalia's huge coastline desalinization would appear as a viable solution, but let us remember that we are *not* in Dubai and desalinization plants and electricity are far beyond the Somalis' purchasing power.

Speaking of the country's electric power distribution network, one cannot disregard its extremely poor condition. Namely, even if the country produces annually 245 million KWh, that is by 17.2 million KWh more power than its domestic needs (according to the

2001 figures), not only it is unable to export its surplus, but even the required power often fails to reach its consumers, brownouts being a common fact.

Let us note, however, that, partly attracted by the novelty, partly by the advantages brought by a modern means of communication, some 35 thousand Somalis have mobile phones, virtually entirely in urban areas (as the wireless network does not extend in the desert countryside).

And where from do they draw the financial resources necessary to buy technical appliances and other commodities (FOB imports of $344 million per annum)? Let us just say that with a migration of 17 per thousand of the labor force of 4.3 million people (some 53% of the people are of active age), the informal cash flow from abroad is kind of consistent. Is this a sign that the Somali economy is starting (shyly) to be moving ahead? Shall it surpass the consumption satisfaction phase? Let us hope so.

Ending in a probably steep manner, I would like to state that I did not intend herein to exhaust the subject of Somalia's problems and perils, neither to advance viable solutions, as I plan these aspects to be widely debated in a further, extensive study concerning the history and civilization of this country, its political regimes before and after its dropping into anarchy and, in a consistent measure, concerning the international peace-making, peace-enforcement and humanitarian missions, the precedents created and Somalia's place in foreign affairs.

Bibliography

1. Calvocoressi, Peter, *Politica mondială după 1945*, ediția a VII-a, Bucureşti: Editura Allfa, 2000
2. CIA – The World Factbook – Somalia, [www.cia.gov/cia/publications/factbook/geos/so]
3. Earth Trends Country Profiles, [http://earthtrends.wri.org]
4. Hanley, Gerald, *Warriors. Life and Death among the Somalis*, London: Eland Publishing, 2004

5. Maj. Day, Clifford E., *Critical Analysis on the Defeat of Task Force Ranger*, The Research Department, Air Command and Staff College, 1997
6. State Department of the United States, [http://usinfo.state.gov]
7. UN Global Policy Forum, [www.globalpolicy.org]
8. Wikipedia – The Free Encyclopedia [http://en.wikipedia.org]

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

FORUM

MODELS OF THINK TANKS

Miruna Andreea Leahu*

Abstract
Les think tanks sont une réalité davantage developpée dans le monde politique anglo-américain, mais ne sont pas une specificité des États-Unis ou de la Grande-Bretagne.Cet article presente des models differents de think tanks: le modele Américain, Européen et Centrale Européen. Les think tanks s'occupent avec la production de solutions de politiques publiques. Ils essaient de communiquer les résultats de leur recherche, qu'ils essaient de les faire passer dans le monde politique.Contribuant aux nouvelles idées en politique, ils stimulent le débat entre les dirigeants et l'opinion publique.

In the academic literature, the notion of think tank gained the statue of a very slippery term, a so-called umbrella term, meaning different things for different people. It is exactly the vague character of the definition that has transformed think tanks into a fashion in the Western and post-communist political environment (Stone, 1996:40). How can we define a think tank? The most common definition describes a think tank as a permanent organization, specialized in finding solutions or viable alternatives to the public policies. These kinds of organizations are not responsible for the government's activities and decisions. Maintaining the independence of research, without taking into consideration personal interests, is one of their strongest points. Within the ever-expanding universe of policy research institutes, think tanks occupy a space somewhere between government and academia. A think tank is neither a government

* Miruna Andreea Leahu is M.A. student in Comparative European Studies, Babeş-Boylai University, Cluj-Napoca, Romania.

agency nor a university institute. It is difficult to say more about the specific nature of these institutions because their functions are so diverse.

Think tanks can improve the quality of public policy by broadening the pool of available ideas, identifying new options and adding a longer-term perspective to policy debates. They can make up for a deficiency in analytical capacity in countries where the civil service is weak in this regard. They can act as intermediaries between the rest of the world and decision-makers. Experts, academics and practitioners often have useful data but no means of feeding it into the policy-making process. As a result, much useful knowledge remains inert. A resourceful well-connected think tank can link the output of society at large to the needs of government, at minimum effort, and to the benefit of all sides. Think tanks can add an international perspective to policy debates, by looking to lessons from other countries, and by working with other bodies across national boundaries (James, 2003:49-50).

The most effective type of think tank is a good model for the type of body needed to channel the input of civil society to government. It can act as a link between civil society and government, gathering information, taking knowledge about social problems that exists within civil society.

The final purpose of think tanks is to contribute to the common good.

Such an approach is legitimate in many respects: for a long time, think tanks were perceived as typically, if not exclusively, American institutions. It is the American environment of policymaking marked by fragmentation and the separation of executive and legislative power, the American distrust for federal bureaucracy, the weak American party system, the American philanthropic tradition, and finally, the American tax regime which made policy research institutes such as Brookings, the American Enterprise Institute, and the Center for Security and International Studies into autonomous and influential players (Krastev, 2000).

Anglo-Saxon culture, founded upon the power of rational argument, is the proper context for understanding the power of twentieth-century independent policy research institutes in America and Britain.

It is not coincidental that in Eastern Europe, Latin America, and Asia no one tries to translate the term 'think tank', but rather adopts the concept in its English wording, with all its cultural connotations. It is also not by chance that influential think tanks are still exceptional in Germany or France. (Krastev, 2000).

Policy intellectuals strive to present their conclusions as impartial expertise, but they are always trying to get the attention of politicians. Think tanks, as institutions that sit uneasily between government and universities, embody this ambiguity. Think tanks thrive in the US, where over 1,000 private ones have been identified, about 100 in Washington DC alone. Their new role is to challenge conventional wisdom. They can articulate the instincts of dissidents in the language of the academy, and suggest ideas that bridge the gap between instinct and policy.

Abelson's (2002) explanation of why U.S. think tanks seem to be more influential is because there are differences in political structures.

"With a government based on separate branches sharing power, a party system in which members of Congress are free to vote as they wish, and a growing number of presidential candidates trying to develop new ideas, [American] think tanks have multiple opportunities to shape public opinion and public policy".

In practice, policy institutes are not limited to core functions of research, analysis, and advocacy. They also engage in education, training, conferencing, publishing, marketing, lobbying and various forms of liaison with legislative and executive agencies. Along with their explosive growth since 1960, policy institutes have differentiated and specialized their functions as a practical response to the accelerating demand for policy-relevant knowledge by public and private policymakers.

The rise of policy research institutes is a response to practical problems spawned by urbanization, industrialization, economic growth, and, most recently, the upheavals and dislocation attending the establishment of post-socialist societies, the globalization of business and commerce, and the degradation of our natural environment (Dunn, 1996).

In the United States, governmental think tanks are also known as the "shadow government" (Dickinson, 1971). Although these organizations do not matter for the electorate, they have the power and they have an importance in the political process. They are the fourth power of the government among the legislative, the executive and the juridical power. The federal think tanks offer a fertile terrain for research, from the Pentagon think tanks (their purpose is to create and develop the foreign affairs and military policies, different tactics and strategies, military technologies) to the governmental agencies think tanks. In a remarkable way, although these think tanks play a crucial part in establishing alternatives for different policies adopted in a state, most of the times, their role remains unknown in the moment their solutions are authorized.

In the United States, the personnel for administrative positions is not recruited from political parties, the American parties are too weak to accomplish this function; they are nothing more than electoral coalitions. Think tanks can easily fill this void. Overall, the particular shape of the American political system, fragmented and decentralized, with weak political parties, has created a wide number of policy organizations, ranging from the various committees and subcommittees of the legislative and executive branches to the high number of politicians working independently from party ideology that provides opportunities for policy analysis and professional research. According to Abelson (2002), think tanks have multiple channels to help them spread their ideas to policy makers. The combination between the high demand of political consulting and influence channels explains the prominence of the American think tanks.

The new fashion in the US think tank world is the sudden interest for predictions. This futuristic orientation resulted from the mutual initiative of the government and think tanks. Their main occupation is to study the possible alternatives for enhancing the quality of life and for increasing the importance of American technologies.

It is always interesting to watch the arrival of a word onto the European political and media scene. That of “think tank” seems to be on the way to establishing itself in the lexicon – some might say jargon - of European discourse. Paradoxically, the development of think tanks in Europe has hardly been “thought” about. The phenomenon itself is relatively new and few studies have concentrated specifically on the subject (Boucher, 2004). The audience of the European model of think tanks is limited and so are the methods that they use. Specialty studies confirm that the euro think tanks haven't found their place yet in the European policy making. They do not have a personal value system, their utility has a moderate rate and they are perceived as being elitist. All in all they have a limited impact on the public policies and opinion.

Think tanks must offer independent analysis and alternatives to the public policies. They must act as facilitators or catalysts in the E.U. environment. They manage to bring together people that do not normally interact, starting with associations, lobbyists, NGO's, citizens, and academicians, people that serve the same causes but with different perspectives (Stone & Ulrich, 2003). In order to obtain a certain influence in decisional circles, think tanks must develop a liaison with the government. Still, their desire to preserve their intellectual independence supposes finding a balance between the governmental dependence and total isolation. Diane Stone (Stone & Ulrich, 2003) talks about three levels of independence: legal, financial and intellectual independence. The legal independence comes from the status of private organization. A think tank is seen as a commercial entity or a non-profit organization. Despite this fact, few

think tanks have given up their autonomy in favor of the government, a political party or a corporation.

The European model is considered an alternative model, where think tanks follow the leading lines of political parties, corporations or unions. In the last years, this model was taking in by countries like Bulgaria, Hungary or Russia, but most of the world's think tanks still follow the American model.

The main difference between the two models of think tanks- the American and the European one is noticeable in their independence. Except direct development of new policies, European think tanks have the tendency to limit their research and analysis depending on their sponsors.

The specific research of public policy institutes as political actors is very recent. While the first book dedicated to think tanks appeared in the United States over 30 years ago, studying this phenomenon in Europe counts only five years old. Diane Stone (Stone & Ulrich, 2003) explains that the lack of literature dedicated to this subject is due to the late appearance and development of think tanks. They are noticed in Western Europe and U.S. only in the second half of the 70's. Because they were reduced in number and importance, specialists ignored them, given the fact that they did not have enough reasons to transform them in study cases.

Think tanks need a democratic regime in order to work, to be able to express their opinions freely. The collapse of totalitarian regimes in Germany, Austria, Italy (1943-1945), the end of Spanish, and Greek dictatorships as well as the political changes in Eastern Europe after 1989 permitted think tanks to flourish. A second factor was the increased complexity of governments. Once the state has grown in size and enlarged his functions, it appeared the need of policy specialists. Think tanks managed to cover partially this void, becoming a source of political advice for governments. A third factor is the disposal of governments towards greater transparency and opening of the decisional processes. One can notice the effort to attract civil society into policy consulting, increasing the chances of

think tanks to influence the governmental thinking. Such a tendency is observable in E.U. states, in Brussels where the European Commission undertook an active policy of inclusion the civil society and other groups, NGO's, think tanks into the process of taking decisions. Additionally, the growth in number of euro think tanks can be seen as a part of policy activity enlargement processes. In E.U., these think tanks developed because of the difficulties of ratifying the Maastricht Treaty. European politicians and bureaucrats worked for increasing the levels of involvement of non-state actors, in a period of E.U. institutional reform and economic and monetary integration.

According to Sherrington (2000), the Brussels decisional nature facilitates the work of think tanks. The E.U. institutions allow the existence of the so-called entry points for think tanks or interest groups that wish to practice their influence on decision-makers.

How can one encourage the proliferation of European think tanks? Many of them express their hope that public authority as well as other decision-makers will come to understand their usefulness in the decision-making processes. It is important that E.U. understands the role of think tanks. The ex-president of the European Commission, Jacques Delors launched an open invitation to the European institutions to strengthen their relations in an active way with think tanks. Euro think tanks claim a greater financial support public or private, especially at a pan-European level. The creation of a European status for foundations and associations is seen as a useful step for encouraging pan-European collaboration due to the fact that private and public funds are still national. This matter is under the debate of the European Commission. Such a legal instrument could solve the problems that appear between different European foundations and their international partners, generating new collaboration instruments and a better access to E.U.'s financing sources.

Meanwhile, think tanks face new dilemmas, as E.U. politics and think tank activities are becoming more partisan and they need

to fight for media attention. Potential users of their work, decision-makers, journalists, academics, are not using think tanks to their maximum value. In many countries, the former still need to learn what a healthy think tank sector can contribute to policymaking and democracy. Decision-makers, both in the public and private sectors, indicate growing signs of interest, both in Europe and in independent policy research. The diversification of funding resources may in the future encourage greater research quality and innovation, if the corporate sector understands that it too should support the public mission services provided by think tanks, and if think tanks in turn are willing to open themselves up to greater financial scrutiny. This could in turn lead to greater private funding streams. Academics are also engaging more with their think tank colleagues and with other areas of applied research. Cooperation and other forms of exchange between think tanks at the E.U. level are increasing. Anglo-American mastery of media relations' techniques is spreading (Boucher, 2004).

The proliferation of think tanks in Central and Eastern Europe is considered a characteristic of democracy and development. Unheard of before the fall of communism, presently, each Central European country has at least one think tank. The reasons for their appearance differs from one region to another but the urgent governmental needs are responsible for their proliferation. Central Europe has always suffered because of the lack of capable institutions to make policy analysis and research.

Central European think tanks work in an environment full of obstacles and, in the same time, of opportunities. Taking into account the absence of independent research institutes during the communism, these organizations have the difficult task to remind governments about their mission. The last years have witnessed the think tanks' efforts to increase their influence in governmental circles, to become a familiar presence to the public through mass media. The idea that a think tank needs independence or autonomy from the state in order to think freely has Anglo-American origins

that do not correspond entirely to European culture. The American model of think tanks appeared in Central and Eastern Europe through the very active American foundations, most of the regional organizations adopting it.

The American stamp on the think tank phenomenon and the fact that it is mainly Americans who write and publish on the role of independent policy research institutes has resulted in the prevalence of a democratization paradigm in the analysis of non-American think tanks. At the heart of the democratization paradigm is the notion that independent policy research institutes are important because they contribute to the opening up of policy-making and to the process of globalization. The conviction that open public debate contributes to the quality of policy decisions constitutes think tanks as powerful instruments for the democratization and rationalization of the policy process (Krastev, 2000). It is this democracy-building function that has encouraged the export of American think tanks over he past 10–15 years. What the United States is eager to export in the post–Cold War world is not just particular economic policies (deregulation and competition) or values ('multiculturalism' and respect for human rights), but a specific process of policy-making. The structure of policy-making has been recognized as the primary guarantee of the sustainability of reforms. The fact that most Central and East European think tanks have been initiated and supported by American sources (both private and government) has contributed to the dominance of the democratization paradigm in the interpretation of East European think tanks. Seduced by the politics of imitation, most of the institutes in the region have consciously adopted the strategies and language of the best-known 'fifthestate' institutions in the United States. In many cases, the emergence of think tanks in the region can be interpreted as the replacement of Western foreign advisors by local 'free advice brigades' (Boucher, 2004).

The popularity of the democratization approach in analyzing post-communist policy institutes is also rooted in the fact that it is a donor-serving approach. Most studies focus on the management of

the institutes, their funding, PR strategies, media–government relations, and their sustainability.

Post-communist policy institutes have been the object of well-designed studies, but they have been studied much more as management units than as policy units. The supply–demand rhetoric, which dominates the discourse on the think tank phenomenon, is also misleading. To assert that policy institutes in the post-communist world have to work to create demand for their products has frequently been the easiest way of avoiding the question, "What do think tanks really produce and how do they create their spheres of influence?" (Boucher, 2004:34)

The problem with the democratization approach is that it falls short of understanding the political rationale of post-communist think tanks and fails to map their place in the politics of transition. The fact that post-communist think tanks have been shaped on the American model does not mean that they must inevitably play a similar role in the policy-making process. The mystery of the post-communist think tank is hidden behind the facade of annual reports and pathetically styled presentations seeking to prove its influence. The origin of post-communist think tanks and their political agenda distinguish them from the American model. Their increasing influence should be understood in the context of the political strategies of liberal intellectuals in the second stage of the transition rather than that of an analysis of the relations between the social sciences and the state in the late 1990s (Krastev, 2000).

In Central and Eastern Europe, ideas matter. The question is how they matter and for whom. A study of think tanks should address these problems, while providing a glimpse inside the 'wooden horse' of post-communist policy-making; in addition, such a study should present a vision for the future. One can suggest that the evolution of think tanks in Central and Eastern Europe is essentially different from that of their American forerunners. In America, think tanks emerged for the purpose of utilizing the social sciences in order to solve particular social, economic, and political

problems. In Eastern Europe, they represent a new strategy for maintaining the liberal agenda.

Think tanks in post-communist Europe have been an effective agent of change as far as the structure of policy-making is concerned. They have not been successful, however, in promoting innovative policy or supplying useful research. Policy analysts in the region are rather knowledgeable managers of expert discourse than experts themselves. This fact greatly shapes the institutions in which they pursue their activities. The major challenge facing think tanks is that, while they have achieved their goal of keeping the liberal policy paradigm in place, they are not ready to exercise influence under the new conditions. Think tanks gained their influence by replacing the discourse of the intellectual with the discourse of the expert, but the lack of a community genuinely committed to scientific work and the investigation of society severely limits their capacity to produce innovative policy solutions (Boucher, 2004).

Think tanks or policy research institutes have played an important role in opening up the policy-making process to the public worldwide, including the post-communist countries. Through policy research and public advocacy, they have provided alternative policy options, educated citizens through the media, and in turn, influenced new legislation and government decisions. Their role in the development process is therefore crucial, as long as they are able to maintain independence in their research and to make the policy process more inclusive and responsive to the needs of citizens. Think tanks might have greater access and capacities to establish a dialogue with policy makers, their connections with other civic groups are quite weak. They are not legitimate as sole representatives of civil society in the policy process.

"Think tanks should not divert all their energies to establish legitimacy within civil society. It is important that they maintain their unique role as independent, credible policy research institutes, the quality of their work could, however, be enhanced by improved links with other civic organizations, especially those that are directly

engaged with promoting sustainable development and democratic governance. Long-term partnership with such organizations will enhance their understanding of reality beyond empirical evidence, and improve the quality of policy advice they provide" (Andjelkovic, 2003:93).

Bibliography

1. Abelson, Donald E. *Do Think tanks Matter? Assessing the Impact of Public Policy Institutes, Montreal* McGill-Queen's University Press, 2002
2. Andjelkovic, Branka "A limited dialogue: Think tanks and the policy-making process in Serbia" in *Thinking the Unthinkable: From Thought to Policy*, p.90 – 101, Bratislava, UNDP, 2003
3. Dickinson, Paul *Think Tanks*, New York, Atheneum, 1971
4. Dunn, William N., *Public Policy Analysis: An Introduction*, 2nd ed., Prentice Hall, 1994
5. James, Simon, „Integrating Civil Society Inputs into Strategic Thinking and Policy-making" in *Thinking the Unthinkable: From Thought to Policy*, p.37 – 55, Bratislava, UNDP, 2003
6. Kimbell, Jonathan, *Think tanks in Central and Eastern Europe – a comprehensive directory*, Budapest, Freedom House, 1997
7. Krastev Ivan, „The Liberal Estate" in McGann, James and R. Kent Weaver (eds.), *Think tanks and Civil Society. Catalysts for Ideas and Action*, New Brunswick, Transaction Publisher, 2000
8. McGann, James, *Think tanks and Civil Societies: Catalysts for Ideas and Action*, New Brunswick, Transaction Publishers, 2000
9. Smith, James A., *The Idea Brokers: Think tanks and the Rise of the New Policy Elite*, New York, The Free Press, 1991
10. Stone, Diane, *Capturing the Political Imagination: Think tanks and the Policy Process*, London, Frank Cass, 1996
11. Stone, Diane, Heidi Ulrich, *Policy Research Institutes and Think tanks in Western Europe: Development Trends and Perspectives*, Budapest, Open Society Institute, 2003

Articles

1. Boucher, Stephen, „Europe and its think tanks: a promise to be fulfilled. An analysis of think tanks specialised in European policy issues in the enlarged European Union", in *Notre Europe, Etudes et Recherches*, no.35, 2004
2. Dunn, William N., „Ideas into Action: Think tanks and Democracy" in *Economic Reform Today*, no.3, 1996
3. McGann, James G., „How think tanks are coping with the future", in *The Futurist* Washington, Nov/Dec 2000, Vol.34, Iss. 6
4. Sherrington, Philippa, „Shaping the Policy Agenda : Think tank Activity in European Union" in *Global Society*, no.14, 2000
5. Stone, Diane „The Changing Think tank Landscape" in *Global Society*, vol.14, no.2, 2000

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

BOOK REVIEW

Paul Magnette, *Europa, statul şi democraţia. Suveranul îmblânzit*, Iaşi, Institutul European, 2005, 248 p. (traduction roumaine et préface par Ruxandra Ivan) (Paul Magnette, *L'Europe, l'Etat et la démocratie*, Bruxelles, Editions Complexes, 2000)

Sergiu Mişcoiu

La politique demeure-t-elle la même dans la « constellation post-nationale européenne »[1] ? Ou bien l'Europe invente un système politique « par-dela et en-deçà de l'Etat-nation »[2] ? Et, tout en premier, qu'est-ce que politiquement l'Europe ? Une confédération ou bien un « Etat-région »[3] ? Voici autant de questions-défi que le livre de Paul Magnette, *L'Europe, l'Etat et la démocratie*, dont la traduction roumaine vient de paraître chez l'Institut Européen de Iaşi, s'est proposé d'aborder, du moins d'une manière schématique. Il n'est point étrange donc que l'auteur bruxellois ait commencé avec « l'Europe à l'époque de l'Etat »[4], tout en précisant, dès le début, que le processus d'intégration a toujours reposé sur la volonté des Etats-nations. Selon l'auteur, le bref passage par une période d'enthousiasme fédéraliste, à la fin des années quarante, n'a eu que le mérite de mettre en évidence « l'impossibilité de la fédération européenne »[5]. D'où la nécessité de l'invention d'un modèle communautaire que l'auteur n'hésite pas de particulariser d'une

---

[1] Selon un concept inventé par Jürgen HABERMAS, *Apres l'Etat-nation. Une nouvelle constellation politique,* Paris, Fayard, 2000

[2] Christian PHILIP, Panayotis SOLDATOS (éd.), *Au-delà et en deçà de l'Etat-nation*, Bruxelles, Bruylant, 1996.

[3] Kenichi OHMAE, *De l'Etat-nation aux Etats-régions*, Paris, Dunod, 1996

[4] pp. 33-40.

[5] pp. 40-49.

manière parfois exagérée, notamment lorsqu'il insiste sur la spécificité institutionnelle de la CECA (qui repose, selon l'auteur, sur un « triple équilibre »[6]).

Les équilibres semblent constituer, d'ailleurs, le trait le plus représentatif des Communautés, puisque Paul Magnette les comprend comme une spécificité absolue de celles-ci. Trois équilibres sont pris pour étant les plus importants. Celui entre les juges et les politiques[7] coupe court, selon l'auteur, à la vision traditionnelle montesquienne qui décrète le caractère discret du pouvoir juridique : le praxis du droit communautaire fait du pouvoir juridique, par la force des arrêts, un pouvoir quasi-décisionnel en matière politique. Tout en admettant cette sorte de glissement vers un modèle plutôt anglo-saxon (seulement en ce qui concerne cet aspect-là), une certaine distance par rapport à la conclusion de l'auteur s'impose : peut-on faire du juge, dont les seuls moyens sont les arrêts dans le cas des litiges et les interprétations lors des divers contentieux interinstitutionnels, l'équivalent du ministre (décideur, exécuteur) ou de l'euro-parlementaire (décideur, censeur) ?

Par contre, les deux autres équilibres signalés et explorés par l'auteur – celui entre la politique et la technocratie[8] et celui entre le fédéralisme et la souveraineté[9] – correspondent d'une manière plus fidèle à la description de la réalité communautaire. Le premier de ceux-ci est d'ailleurs brillamment inventorié par l'auteur qui, en opérant une démarche analytique en étapes, arrive à une conclusion qui mérite d'être retenue : tandis que le supranationalisme n'a pas emporté la mise, mais a abouti à concerter les instances nationales, le technocratisme domine la *low politics* sans avoir cependant la capacité de fixer les lignes politiques générales qui demeurent la préoccupation des diplomates. L'analyse du troisième équilibre – celui entre le fédéralisme et la souveraineté – va dans le même sens.

[6] p. 53.
[7] pp. 80-110.
[8] pp. 111-37.
[9] pp. 137-65.

L'auteur signale l'existence d'un « fédéralisme des Etats »[10] qui repose sur un contrat fédéral auquel l'Europe est parvenue à travers un « fédéralisme intergouvernemental » doublé par un « fédéralisme civique ». C'est par ce modèle institutionnel, dont l'unicité est mise en évidence d'une manière convaincante par l'auteur, que la souveraineté des Etats-membres a pu se maintenir dans les limites jadis établies par Bodin, tout en soutenant l'avancée du projet communautaire européen.

Pour revenir de cet enthousiasme idéalisant, l'auteur nous renvoie, dans la troisième partie de son ouvrage, aux « tensions démocratiques »[11] que le processus d'intégration a engendrées. Il s'agit, en tout premier, de la déjà classique crise de légitimité que l'intégration avancée a mise en évidence, mais qui existait depuis les aubes des Communautés[12]. En effet, la « légitimité téléologique des débuts » fut rapidement remplacée par une perpétuelle tension entre « la légitimité représentative » et « la légitimité rationnelle-légale », ce qui abouti, lentement, à une démission des politiques par rapports aux premiers buts communautaires et à des rajustements continus des objectifs, fixés plutôt à court terme. On a du attendre Maastricht pour se rendre compte des dimensions de la crise de légitimité européenne. A partir de ce moment-là, les discours font état plutôt d'un « déficit démocratique » et, de surcroît, d'une « crise de confiance dans le pouvoir publique »[13]. Il faut ajouter que l'auteur serait sans doute « content » de la confirmation de sa thèse par le rejet du Traité constitutionnel en 2005 par la France et les Pays-Bas.

Que faire de cette Europe où la démocratie représentative fait quasiment défaut ? L'analyser en détail, en tout premier. D'où un tableau schématique des tares du système politique européen, à commencer par l'irresponsabilité institutionnelle, par la « dé-temporalisation des décisions », en passant par la « déstructuration

[10] p. 146.
[11] p. 167.
[12] pp. 169-90
[13] p. 182.

des espaces civiques » et la démission des acteurs politiques traditionnels, pour parvenir à l'émergence et à la consolidation des acteurs sectoriels et à l'apparition de nouveaux modes de revendication politique. Pour gérer cette transformation, un mécanisme reposant sur la « technocratie ouverte »[14] semble frayer son chemin vers l'instillation au sein du système institutionnel européen. La solution envisagée est donc l'adaptation du système reposant sur la souveraineté populaire aux évolutions générées non seulement par l'approfondissement de l'intégration européenne, mais aussi par le délitement du politique lui-même.

A ce point-là, l'auteur s'emploie, à raison ou à tort, à une comparaison assez risquée, tout en faisant état d'un « espace politique orléaniste »[15]. La dominante de cet espace est la prééminence des partis et des unions de centre-gauche et de centre-droite qui imposent, selon l'auteur, un certain monopole sur les débats européens. En même temps, l'orléanisme européen repose, à cause de la spécificité des exigences quant à la compréhension du système politique européen et à la participation à celui-ci, plutôt sur les classes sociales aisées et donc sur une certaine « exclusion censitaire ». A tout cela s'ajoute l'importance des intérêts privés qui prennent la forme du lobbying et s'échappent ainsi au contrôle démocratique. Ce que l'auteur peine à nous expliquer, c'est la relation entre la technocratie ouverte, qui était justement la solution aux inconvénients résultés pas la crise de légitimité, et cet espace politique orléaniste : est-ce que la technocratie ouverte est le remède ou bien le gestionnaire de cet espace ?

Le mérite le plus important du livre de Paul Magnette est donc plutôt celui de problématiser, d'une manière schématique, les défis et les inconvénients du système politique européen et, notamment, celui d'offrir un modèle pour l'étude de l'évolution des légitimations du pouvoir politique communautaire par rapport aux principes

[14] pp. 214-20.
[15] pp. 221-33.

classiques de la représentation démocratique. Les réponses aux questions posées et les solutions envisagées pour remédier à la crise européenne de légitimité sont, naturellement, sujettes à des possibles contestations. Mais la capacité de l'auteur de suivre et de théoriser les tendances majeures de ces évolutions politiques recommande *L'Europe, l'Etat et la démocratie* comme un arrêt incontournable pour les scientifiques qui se penchent sur le système institutionnel de l'Union Européenne. Notons aussi la précision et la clarté de la traduction roumaine réalisée par Ruxandra Ivan, et cela en dépit des difficultés d'un texte français parfois truffé de flamboyants artifices linguistiques.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

BOOK REVIEW

Vladimir Tismăneanu *Stalinism pentru eternitate. O istorie politică a comunismului românesc*, Polirom, 2005, 416 p. (traducere de Cristina Petrescu şi Dragoş Petrescu, postfaţă de Mircea Mihăieş) (Vladimir Tismăneanu, *Stalinism for All Seasons. A Political History of Romanian Communism*, Berkeley: University of California Press, 2003).

Laura Herţa Gongola

Vladimir Tismăneanu's *Stalinism pentru eternitate…(Stalinism for all Seasons …)* is a political history of Romanian communism, offering a well-documented (based on interviews with former communist leaders and on documents from the archives), as well as an all-encompassing analysis on the origins, evolution and particularities of the Romanian communist experience. The scientific endeavor was based on the author's decision to write a political history of Romanian communism stemming from "an obligation", as the author himself explains in the introductory chapter *Why a History of Romanian Communism?*, related to the scholarly, but also personal preoccupations, due to the *milieu* in which the author grew up, predominantly marked by the "Spanish Civil War, the saga of world communism, the rise of Nazism, the Moscow show trials and purges, the Molotov-Ribbentrop pact, the Comintern, the Cominform, the excommunication of the Yugoslav Communist Party leader Tito, Stalin's death […] Khrushchev's denunciation of the cult of personality […], the Hungarian revolution, and many other chapters in the history of the twentieth century and Leninist internationalism"(pp. 23-24).

The first chapter *Înțelegerea stalinismului național. Moştenirea socialismului ceauşist (Understanding National Stalinism: Legacies of Ceauşescu's Socialism)* offers a keen analysis of the Romanian communist experiment (which is integrated within world communism), exploring the particularities leading to its violent collapse in 1989, emphasizing on "the commingling of Leninist and Byzantine traditions in a uniquely cynical and manipulative political formation" (p. 41). The distinction between the two "theoretical archetypes" (p. 56), *national communism* and *national Stalinism*, that the author insists on in this chapter, is pivotal for a conceptual understanding of the Romanian sinuous transition in the post-communist era, due to, primarily, the lack of a reformist group within the party that might have limited the "leading role" (p. 53) of both Gheorghiu-Dej and Ceauşescu.

The second chapter *O sectă mesianică. Partidul Comunist Român în ilegalitate, 1921-1944 (A Messianic Sect: The Underground Romanian Communist Party, 1921-1944)* can be considered a radiography of Romanian Left from its early beginning, dwelling on its peripheral role and position throughout the interwar period, as well as on the Bolshevik Revolution and its influence on the Romanian socialism. Another central focus of the author is the split between the radicals (maximalists) and the "traditionalists" (moderates); a very detailed presentation of the "divorce" of "those who were ready to endorse the radical measures of the Bolsheviks" from "those who decried the terrorist methods of Lenin, Trotsky, and their comrades" is included here (p. 65-66). A due consideration is paid to the biographies of certain major figures within the Romanian Left.

Drumul spre puterea absolută. De la cvasimonarhie la democrație populară, 1944-1948 (The Road to Absolute Power: From Quasi-Monarchy to People's Democracy, 1944-1948) is a chapter that concentrates on the establishment of the "people's democracy" and the major steps taken towards the proletariat dictatorship: the elimination of the National Peasant Party and the National Liberal Party by the communists, the unification of the Romanian Social Democratic Party with the

Romanian Communist Party and the forced abdication of King Michael. The chapter thoroughly examines the Stalinization of Romania and the three centers within Romanian communist elite during the Second World War: "the Central Committee headed by Ştefan Foriş" (pp. 119-120), the "Center of the Prisons" led by Gheorghiu-Dej (pp. 120-122) and the group from Moscow (pp. 122-123).

The (suggestively called *Stalinismul dezlănțuit – Stalinism Unbound)* fourth chapter describes the way in which the Romanian communist have started building the "Soviet-style dictatorship of the proletariat" (p. 107), focusing on the measures taken in this respect as far as industry, agriculture and intellectual life were concerned. Special attention is paid to the case of Lucrețiu Pătrăşcanu (pp. 148-158) and to the purge of "the Balkan Pasionaria", Ana Pauker, as well as of Vasile Luca and Teohari Georgescu (pp. 158-172).

Stalin's death, the reverberations of the cult of personality (at the CPSU's XXth Congress) in communist Romania, the demise of "monolithic internationalism" (p. 173), the "new course", the new approach of the Romanian communist elite in its relations with Moscow, based on a withdrawal from the previous tight subordination and on the April Declaration, aiming towards a type of national communism and a form of autonomy (that can be understood only within the Moscow satellite experience), are all examined in chapters 5 *Undele de şoc ale Congresului al XX-lea al PCUS (Aftershocks of the CPUS's Twentieth Congress)* and 6 *Opoziția față de Hruşciovism. Gheorghiu-Dej şi apariția comunismului național (Opposing Khrushchevism. Gheorghiu-Dej and the Emergence of National Communism)*.

The last chapter *Comunismul dinastic al lui Ceauşescu (Ceauşescu's Dynastic Communism*) addresses the period of 1965-1989, focusing on "socialism in one family", on the communist leader's cult of personality, methods of leadership, the increasing role of Securitate, on one hand, and of the social and inteligentsia discontent, on the other hand.

Vladimir Tismăneanu's *Stalinism pentru eternitate…(Stalinism for all Seasons …)* offers an all-encompassing perspective of Romanian communism, containing a keen observation of domestic particularities, but also an approach of the Romanian "experiment" in an almost permanent comparative analysis with the evolution of other communist states; it offers historical facts, which are never superfluous, in order for the reader to understand the discourse and theoretical interpretation of the Romanian Left, but also a conceptualization meant to help the reader follow its historical phases. It is also an analysis of the post-1989 period, endemically connected to the entire evolution of the Romanian Left.

BOOK REVIEW

Jürgen Habermas, Joseph Ratzinger, *Dialectica secularizării. Despre raţiune şi religie*, Cluj-Napoca, Biblioteca Apostrof, 2005, 120 p. (Romanian translation by Delia Marga, Introduction by Andrei Marga: Jürgen Habermas, Joseph Ratzinger, *Dialektik der Saekularisierung. Uber Vernunft und Religion*, Verlag Herder Freiburg im Breisgau 2. Auflage 2005.)

Monica Meruţiu

The Romanian version of the historical debate between philosopher Jürgen Habermas and famous theologian Joseph Cardinal Ratzinger taken place at the Catholic Academy of Bavaria in Münich, on January 19th, 2004 was recently published, during the ceremony of offering the Doctor Honoris Causa distinction from Babes-Bolyai University to former Cardinal Ratzinger, today Pope Benedict XVI.

Having a brilliant translation made by Professor Delia Marga, translation that gives elegancy and charm to the sometimes rough philosophical text, the book invites the reader to an exploration of the universes of two of the most influential and active personalities of our era.

Habermas-Ratzinger debate has also been subject of a conference held in April, 2005, organized by Professor Andrei Marga, who signs the Introduction of the *The Dialectic of Secularization. Of Reason and Religion*, (Cluj-Napoca, Bibiloteca Apostrof, 2005) and who showed an astonishing vision, the conference having place on the exact days of the election of Joseph Cardinal Ratzinger as Pope Benedict XVI.

Author of *Religion in the Globalization Era* or *Philosophy and Theology Today*, to name just a few titles from the philosophy of religion field, and a monograph on *The Philosophy of Habermas*, his most recent book, Professor Marga's Introduction focuses on the framework of the two personalities involved in the debate, offering a complete and objective picture of their views, beliefs and ideas: an analysis of Habermas's approach of religion and a study of the theological and philosophical work of Joseph Ratzinger. It also represents a shift from the consecrated clichés on Ratzinger's complex personality and gives an accurate answer to the delicate question –*who is Joseph Ratzinger*?

Considered rather "unexpected" due to the different views that Habermas and Ratzinger have, Professor Marga shows the favorable premises of this debate, naming five major ones, premises that pass over the classical sometimes simple perception that looks at the German philosopher as representative for the secular mind and opposed to this the German theologian as an example of devoted Christian.

Moreover the debate itself stands for the impressive similarities and *convergences* on issues like the relationship between religion and philosophy, the crisis of the European society, the emergence of the post- secular society.

Both Habermas and Ratzinger believe that religion needs reason in order to avoid its metamorphosis in fundamentalism, just like the secular society needs religion, as a complement in solving the crisis, both Ratzinger and Habermas identify "pathologies of reason" and "pathologies of faith", stating that″ philosophy and religion should learn from the one another's arguments and experience″, emphasizing the importance of a connection between "faith" (*Glauben)* and "knowledge" (*Wissen*).

The main topics of the debate focuse on the pre-political foundations of the democratic state, on the need of our pluralistic societies for moral foundation, on whether democracy needs religious premises or not**.** Cardinal Ratzinger stated the importance

of the moral "pre-political" foundations for a liberal secular state, while Habermas questioned whether modern democracies are getting their resources, their basic values from sources that they can not themselves produce, whether law provides all the indicators required for the life inside the community, whether a secular society can establish mutual obligations and different types of solidarity within a community, how should the religious and the layman citizen approach each other.

Habermas considers that the liberal state should "treat with care all cultural sources on which the normative consciousness and solidarity of citizens draws", that liberal democracies must leave a wide space for religious expression and religious forms of life. He insists on the concept of a post-secular society and he states that "the expression *post-secular* gives to religious communities public recognition…In the public consciousness of a post-secular society, a normative intuition reflects through, and this insight has consequences for the political relations between believers and unbelievers. In the post-secular society, it becomes imperative the recognition that the *modernization of the public consciousness* transforms reflexively, in different phases, both religious and worldly mentalities. "

This process can lead to a mutual understanding between the religious and the non-religious, as long as the "secularization of society is seen as a complementary learning process and so they have cognitive reasons to take seriously each others' contributions to controversial topics of the public space."

Cardinal Ratzinger agreed that there is needed "a necessary co-relationship of reason and belief, reason and religion, which are called to mutual healing and purification, which need each other and must admit each other's existence."

The Habermas - Ratzinger debate stands as a decisive evidence that the secular and the religious can come together in a pragmatic dialogue, not only speculating but also offering solutions.

STUDIA UNIVERSITATIS BABEŞ-BOLYAI, STUDIA EUROPAEA, L, 2-3, 2005

BOOK REVIEW

Michel Foucault, *Sécurité, territoire, population. Cours au Collège de France 1977-1978,* Seuil/Gallimard, Paris, 2004, 435 p.

Val Codrin Tăut

Le cours de 1978 comble une lacune thématique du système foucaldien. La stratégie adoptée par les éditeurs des posthumes de Michel Foucault s'est concentrée jusqu'à l'apparition de ce livre soit sur les travaux visant l'analyse du pouvoir (tels *Les Anormaux* ou « *Il faut défendre la société* »), soit sur celles concernant une redéfinition de la question du sujet (*L'herméneutique du sujet*). *Sécurité, territoire, population* représente de ce point de vue l'effort de faire accessible à un large public le liant entre le Foucault théoricien du pouvoir et le Foucault préoccupé par une nouvelle théorie de la subjectivité. La structure interne de *Sécurité, territoire, population* s'organise autour de deux axes : le problème d'un nouveau diagramme du pouvoir – le pouvoir sécuritaire, et la question de la gouvernamentalité. Du point de vue méthodologique, le cours de 1978, utilise les mêmes stratégies présentées dans les autres livres de Foucault. Il faut noter toutefois qu'il existe sur le plan méthodologique une redéfinition du concept d'intelligibilité rapportée à l'histoire. Pour Foucault, l'intelligibilité rapportée à l'histoire ne réside pas dans l'assignation d'une cause toujours plus ou moins métaphorisée en origine mais dans quelque chose que le philosophe français appelle la constitution ou la composition des effets.

a) *Le pouvoir sécuritaire*. Tout lecteur de Foucault sait que celui-ci a essayé dans des livres comme *Surveiller et punir* de théoriser un type de pouvoir différent du pouvoir souverain, c'est-à-dire le pouvoir disciplinaire. Comme le souligne déjà Foucault dans le

dernier cours de *Il faut défendre la société*, le pouvoir souverain est entré en crise selon deux axes. Le premier concernant les individus, a donné, en compensation, naissance aux techniques disciplinaires. L'autre axe de la crise c'est la dimension du multiple spécifique à la biopolitique. C'est dans ce deuxième compartiment que s'inscrit *Sécurité, territoire, population.*

Voyons quels sont précisément les éléments distinctifs de cette nouvelle technique du pouvoir sécuritaire. En premier lieu, il faut dire que les réactions du pouvoir se situent, dans ce cas, dans l'ordre du calcul et non pas dans l'ordre de l'admis et du permis. Pour suivre plus clairement le spécifique du sécuritaire, il faut prendre quelques exemples. En ce qui concerne l'espace, il s'agit d'assurer une distribution efficace de celui-ci, c'est-à-dire de faire circuler les éléments. C'est à ce point-là que se manifeste une certaine différence entre le disciplinaire et le sécuritaire, car l'espace n'est plus regardé comme une matière inerte que le pouvoir doit informer, mais, plutôt, comme un medium dans le quel se manifestent des séries ouvertes d'événements. Il ne s'agit donc d'intervenir sur l'espace pour le produire d'une certaine manière, mais de maximaliser le rôle des éléments positifs et de réduire les éléments négatifs.

Les pratiques économiques visant à encadrer des phénomènes tels que la disette, la circulation des céréales, ou la constitution d'un marché européen se constituent comme un deuxième exemple qui permette à Foucault de distinguer les deux types de pouvoir. En suivant l'analyse des Physiocrates, le philosophe français montre que les mécanismes disciplinaires sont centripètes parce que leur action se manifeste comme segmentation et comme isolation, tandis que les mécanismes de sécurité sont centrifuges, c'est-à-dire ils actionnent par l'intégration des éléments. Donc, il existe une grande différence en ce qui concerne les pratiques du détail, le pouvoir sécuritaire étant plus accordé au réel parce qu'il fait jouer une partie du réel contre une autre.

Un autre plan d'analyse, utilisé par Foucault en tant que grille de différenciation entre le disciplinaire et le pouvoir sécuritaire, est

représenté par les modalités spécifiques de normalisation inscrites dans ces deux diagrammes du pouvoir. A ce point-là, le spécifique du sécuritaire est que celui-ci opère une décomposition des éléments en vue d'une meilleure compréhension qui expose l'objet à une meilleure intervention. La différence la plus visible soulignée par Foucault est que les techniques disciplinaires essayent de séparer le normal et le pathologique en suivant un étalon de la normalité, tandis que les technologies de la sécurité assument la continuité entre le normal et le pathologique en essayant de faire prévaloir la courbe statistique positive. Donc, pour le disciplinaire, la normalité est rendue possible par une norme antérieure, tandis que, pour la matrice sécuritaire du pouvoir, il s'agit de laisser se manifester une pluralité différentielle de la normalité.

Comme on l'a vu à travers la série d'exemples invoqués ci-dessus, la matrice sécuritaire du pouvoir apporte avec elle quelques éléments nouveaux et quelques transformations structurales. Mais, l'aspect le plus important dans cet ordre d'idées, est sans doute l'apparition de la population. Pour longtemps, la population s'est déjà manifestée comme quelque chose de négatif, comme la dépopulation. Elle a commencé, selon Foucault, à prendre un aspect positif avec le Caméralisme et avec le Mercantilisme. Mais la véritable transformation du concept de population s'est opérée à partir des Physiocrates, qui l'ont considérée comme un ensemble des processus qui doivent être gérés compte tenu de leurs caractéristiques naturelles, qui varient l'une par rapport aux autres. Donc, la population est loin d'être simplement un cumul des forces indéterminées et pour cela déterminables par le pouvoir. La découverte de la population va déborder le champ spécifique au domaine politique pour devenir un opérateur de connaissance. Selon Foucault, la population, en tant qu'opérateur, c'est-à-dire, en même temps, objet de connaissance et concept de connaissance, a fait possible le passage de l'analyse des richesses à l'économie politique, les déplacements du grammaire dans la direction de la philologie historique et la modification de la biologie - d'une discipline

classificatoire en une analyse des relations complexes entre l'individu et le médium à travers une population.

b) *La gouvernamentalité*. Passons maintenant à l'analyse de la gouvernamentalité. Aux 16e-18e siècles, on assiste à une explosion de toute une littérature concernant la gouvernamentalité, aspect qui peut être attribué à une reprise de certains thèmes de la morale stoïcienne, qui se manifeste comme une sorte de déroulement des multiples faces de la gouvernamentalité. Au-delà de cette reprise d'un certain ton moral, il y a, en outre, comme éléments décisifs, la reforme et la dissolution des structures féodaux. De la pluralité des pratiques de gouvernamentalité, Foucault traite seulement la gouvernamentalité politique, noyau théorique qui s'est développée comme un contre-courant du machiavélisme. La grande différence entre le modèle de Machiavel et la gouvernamentalité est que, tandis que le pouvoir du Prince est quelque chose d'hétérogène par rapport aux autres pouvoirs, la gouvernamentalité doit assurer les continuités ascendantes et descendantes du pouvoir. Selon Foucault, on a trois types d'Etat : l'Etat de justice, l'Etat administratif, qui correspond à des techniques disciplinaires, et l'Etat de gouvernamentalité, qui est caractérisé par des techniques tels que la *pastorale*, la technique *militaro-diplomatique* et la *police*. La gouvernamentalité, en tant que pastorale, a commencé à se manifester chez les juifs et elle a atteint sa plus grande maturité dans la chrétienté car modèle gréco-romain était moins disposé de se développer dans cette direction. L'aspect le plus important de la pastorale chrétienne c'est le fait qu'elle s'est développe d'une certain façon pour envelopper toute l'existence. Ensuite le passage de la pastorale à la gouvernamentalité s'est réalisé par un débordement de sphère religieuse à cause des révoltes de conduite (par exemple les guerres des paysans), la reforme religieuse et la reforme philosophique de XVIIe siècle. Dans ce contexte la question que le pouvoir doit résoudre est : quel type de rationalité ou du calcul est nécessaire pour gouverner les hommes et sur quels nouveaux objets doit se développer cette pouvoir. Un modèle plus ancien, celui de

saint Thomas est fondé sur l'idée d'une continuité souveraineté de Dieu et la souveraineté politique motif pour lequel on peut parler, dans ce cas, d'une théo-cosmologie-politique. Cette économie du pouvoir va commencer à décliner entre 1580-1660 au moment de l'émergence de l'épistème classique qui aurait le rôle de degouvernamentaliser le cosmos. Au cours de ce phénomène d'une si grande ampleur on assiste à une spécification de la gouvernamentalité qui n'est plus encadrable entièrement ni dans la catégorie de l'exercice du pouvoir souverain ni dans la pastorale proprement dite. Ce nouveau type d'épistème s'organisera autour de *principes*, c'est-à-dire que la gouvernamentalité doit maintenant s'orienter autour de ses propres principes. C'est pour cela qu'on assiste à une fixation de l'Occident sur deux éléments : *principia naturae* et *ratio status*. C'est pour cela que Giovanni Botero devient un des théoriciens programmatiques de cette question a cause de son affirmation selon laquelle : « L'état est une forme de domination sur les peuples, donc la raison d'État sera la connaissance des moyens propres de fonder, de conserver et d'agrandir une telle domination ».

Au delà de cette théorie de Botero, il y a encore deux autres points d'articulations de la nouvelle gouvernamentalité. En premier lieu Foucault se rapporte à la définition de la raison d'État chez Alessandro Palazzo, où l'État est regardé à la fois comme un « dominium », comme un ensemble des institutions juridiques, comme un état de la vie, et comme quelque chose qui s'oppose au mouvement. A son tour, la raison est regardée tantôt comme une faculté de l'âme et tantôt comme une liaison entre les différentes parties d'un objet. Pour Foucault, la définition d'Alessandro Palazzo offre quelques déterminations générales de la raison d'État. Dans cette perspective, raison d'État est orientée sur la conservation perpétuelle de l'État, et s'articule autour du binôme pouvoir savoir. Selon Gabriel Naudé, le deuxième point important de cette théorie de la raison d'État est que l'État a deux versions ou deux phénoménalités. D'une part on parle de l'État comme d'un principe d'intelligibilité ou comme un schéma d'intelligibilité pour des entités

déjà donne (c'est en gros le rôle de l'État dans la théorie politique). D'autre part, il y a l'État en tant qu'objectif qui va donner naissance à un ensemble des politiques visant à conserver l'État. Donc, la raison d'État est encadrée par deux types d'éléments concernant l'État : d'un part, celui-ci apparaît comme une structure d'intelligibilité, d'autre part, il s'agit d'un objet d'intervention. C'est grâce à cette double détermination que la gouvernamentalité a pu prendre dans l'Occident la forme d'un pouvoir sécuritaire.