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Europe needs initiative and leadership to overcome the crisis

by

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Abstract

This paper applies the interpretative scheme "crisis-initiative-leadership" - developed with reference to the European unification process as a whole – to the current crises to analyse if and how the crises are being exploited by adequate initiative and leadership in the EU.

Key-words:

European Union, crisis, initiative, leadership

The economic and financial crisis, and then the Greek sovereign debt crisis, have put under severe strain the very existence of the Euro. The European Union seems unable to respond adequately to these crises. Even when a decision was finally taken on the 9th of May – exactly sixty years after the Schuman Declaration which ignited the unification process - the financial markets, after an initial rebound, have responded negatively. This paper applies an interpretative scheme, developed to analyse actors and timing of the European integration process, to the current crisis, in the attempt to draw some lessons from past experience and some policy recommendation for the current situation.

1. Crisis, initiative, leadership

The idea that crises provide occasions for Europe to advance is frequent in the public and political discourse of many actors of the unification process. Monnet and Spinelli's activities and reflections provide ample evidence of this idea (Monnet 1976; Spinelli 1979, 1984, 1987, 1989, 1992a, 1992b). Building on their thought as much as on their experience, Mario Albertini[I] theoretically developed an interpretative scheme of the European integration process based on three elements: crisis, initiative, leadership (see also Castaldi 2005 and 2009). This scheme was an ideal-type, a theoretical abstraction based on historical observation, aimed at identifying the elements whose concomitant presence is necessary to produce a significant advance in the integration process. It was then used to explain why in certain moments such advances had been possible, while at other times setbacks or failures occurred; and to identify the different relevant actors of the process. Experience showed that European supranational institutions, national governments, European and federalist personalities and movements all played an important role at specific moments, and this interpretative scheme helped to conceptualize their interaction, going beyond the traditional formulations of the main theories, such as neo-functionalism and intergovernmentalism, which tend to emphasize one set of actors as the main one.

1.1 The role of crises

According to the federalist tradition, the basic push of the European unification process was linked to the historical crisis of the nation state - already discussed in the Ventotene Manifesto – namely the impossibility for the European nation-states to ensure their economic development and security by themselves. These latter goals required states characterized by a vast geographic extension, as shown by the success of the U.S. and the USSR, the two super powers that divided the world and Europe into spheres of influence, even determining the domestic regime of the states under their hegemony.

This structural and long term situation was masked by the dominant nationalist ideology, but manifested itself through the existence of supranational problems. Occasionally these problems turned into socially perceived crises on specific issues, which Albertini called "crises of national powers" (on the two concepts of crisis of the nation state and of national powers see Castaldi 2001). A similar view is proposed by realist authors who consider European integration as a mere instrument of national states to solve certain common problems in the economic and political fields that cannot be faced by a single state (see Milward 1984, 1992, and Milward et al. 1994). Federalists consider however the crises of national powers as a symptom and a reflection of the historical crisis of the nation state, and therefore identify in the European federation a structural solution.

As the intergovernmental tradition argues, when dealing with a supranational problem states normally seek the way of mere cooperation. Nevertheless, a socially perceived crisis on a supranational problem may be the necessary precondition for states to decide and carry out a transfer or pooling of sovereignty – provided the European and federalist personalities and organizations had the ability and strength to pursue that proposal (see Albertini 1965 now in 1999a: especially pp. 240-243; and 1966, now in 1999b: especially pp. 65-73). The crisis may involve a nation state or the Community and the European Union as a whole. When the EU plays a decisive role in dealing with certain problems a crisis of the EU itself can trigger a set of opportunities to re-launch the integrative or disintegrative dynamic.

The importance of the social perception of the crisis, or of a single problem and its supranational character, has to be underlined. The American request for German rearmament during the Korean War can be regarded as a minor crisis, because after the fall of the EDC the creation of a German army was carried out without major tensions with France, also thanks to the collocation of both within the Atlantic framework. But the idea of a German army was socially perceived as a serious danger and this allowed statesmen of the day to propose and bring to the verge of ratification the creation of a European army. On the other hand, the crisis of Bretton Woods was very serious, but the project of monetary union failed in the seventies, and it was carried out only after the fall of the Berlin Wall in order to anchor the reunited Germany to Europe, by the Europeanization of it main element and symbol of power, the Deutsche mark.

The concept of crisis has a fundamental theoretical value. The "crisis of national powers" can be called upon to explain the windows of opportunity and therefore the timing of the debates, choices, and the stages of the process of unification. The crisis functions as a catalyst for decisions. It is the nature of the crisis which determines the type of possible decision, and eventually progress.

The crisis related to the American request of German rearmament explains both the time and the military character of the proposal of a new Community - and the fact that a personality like Monnet, often (wrongly) considered a neo-functionalist, proposed the creation of a European army and a transfer of sovereignty on the point of greatest potential national resistance. Confronted with a crisis on the military field he could not respond with an economic solution, as the collapse of Bretton Woods was followed by the project of monetary union, but rather with a revival of the idea of military integration, which again re-emerged during the Convention at the time of the second Iraqi war, bringing about the provisions about structural cooperation on defence in the Constitutional Treaty and then in the Lisbon Treaty.

Finally, the notion of crisis can clarify the role of various actors, which can significantly vary during the process. The role of European and federalist figures and organizations depends on their ability, at a given time, to identify the supranational problem on which a socially perceived crisis could break out, and thus to mobilize consensus around proposals aimed at advancing the unification process to solve at least partially these crises. If they manage, these actors have a role and their proposals enter the

public debate. If they don't, they disappear from the political scene. Similarly, in the absence of a crisis their propaganda activities are unlikely to lead to decisions involving a real advancement of the unification process, with regard to the transfer of competences - integration – and to the institution-building and the strengthening of supranational decision-making mechanisms – European construction more broadly.

All this means that no one - including the Federalists, notwithstanding what Milward and Moravcsik argue - believes that nation-states can decide about the transfer of sovereignty for federalist reasons (conceived in an ideological way, ie. for the sake of European unity as an ideal). On the contrary, a favorable ideological vision is only a necessary but not sufficient condition for a national leader to take decisions regarding a transfer of competences or powers when this choice is the best solution to respond to a crisis. An ideological nationalist vision, on the other hand, does not allow taking such a decision, notwithstanding the costs of the missed solution of the crisis. The differences of economic growth, unemployment levels and inflation rate between the European states and the United States after the collapse of the Bretton Woods system show the cost of the failure to reach monetary unification in the seventies, especially when compared to the apparent positive effects on the European economy from the birth of the euro.

The crises of national powers being socially perceived force governments to take actions and thus act as catalysts for decisions. They determine the window of opportunity for substantial decisions about the unification process with reference to the problems on which the historical crisis of the nation state shows itself at that particular time. The crises are therefore a necessary condition - for reasons explained by intergovernmental analysis about the normal inclination of national governments not to transfer competences and/or powers to Europe - but an insufficient one, to advance the process. The crises - which are not determined by the actors voluntarily, although their social perception is also linked to their behaviour - offer windows of opportunity that require the active intervention of other actors to be exploited. The concepts of initiative and European leadership now deserve consideration.

1.2 The role of the initiative

The second element of the conceptual scheme developed by the federalists in order to understand the dynamics of the process is thus that of "initiative." Facing a crisis it is possible to provide different answers, more or less effective and with a different relationship between costs and benefits for different groups involved. Obviously, not all answers will involve an advance in the European unification process. It is therefore essential to the process that someone takes the initiative to develop and propose solutions to the crisis involving such an advance. Since governments typically seek the way of mere cooperation, this role is more easily embraced by Europeanist and federalist personalities and movements. The role of Monnet, Spinelli, and the organizations that supported them, has often been to identify clearly and precisely the supranational character of the crisis, and then propose solutions that involved a strengthening of the unification process (Albertini 1966 and 1968).

The concept of "initiative" identifies the role of ideas in the process, a role also emphasized in recent years by social constructivism. Monnet's idea of pooling sovereignty on coal and steel - a specific and limited sector, but essential to international relations, since it was the base of the military heavy industry of the time – was different from simple cooperation and less demanding than a complete political union. This idea determined the start and also some of the ensuing characteristics of the entire unification process. However, every step of the process was conceived and proposed in relation to the crises of the period. For example, when confronted with a military crisis – the Korean war and the following American demand for German rearmament – the previously distant and difficult idea of political unity became feasible. Monnet proposed a European army, and Spinelli pointed out the inconsistency and the danger of any such project, if not supported and directed by a European democratic government. For each step of the process it is possible to identify the personalities and organizations that first devised a proposal and began to gather consensus around it.

1.3. The concept and role of leadership

Ideas and proposals - even if and when they are strong and well grounded - need to be transformed into concrete decisions. This is an issue of power and its exercise. In this context, the concept of European "occasional" leadership has been developed (Albertini 1973 and 1979). Only if a national government or a European institution develops or endorses a proposal from other promoters and inserts it the political agenda, is there any a chance of the proposal's being adopted. Who does that and builds the necessary intergovernmental agreement for the final decision de facto exercises a leadership position at the European level - even in the case of a national leader or government. But it is an occasional leadership because it is due to the desire to solve the crisis related to the proposal; if it were due to the simple aspiration of unifying Europe, this leadership would it would show itself in a consistent manner and not just as a response to a crisis.

The idea of the "occasional" nature of such European leadership connects it to specific crises from a theoretical point of view, explaining why it is not possible for any national leader to devote priority to European integration, as personalities such as Monnet and Spinelli - whose role was, however, that of initiative rather than of leadership, did. Intergovernmental literature has often stressed that the national leaders involved in important integrative decisions were moved by the desire to solve problems and thus strengthen the power of the nation state rather than the will to unite Europe. That literature criticises the hagiographic literature concerning the "European Saints", as Milward calls them (1992, especially pp. 318-344; and also Moravcsik 1998). The concept of European "occasional" leadership incorporates the correct aspect of this criticism, while acknowledging the role and the European function played by national statesmen in certain historical phases. Of course, an ideological inclination in favour of European unity is still necessary in order assume such a role, supporting solutions to crises that also advance the European unification process.

1.4 The concomitant presence of crisis, initiative and leadership and their duration

A fourth aspect should be added to this scheme (crisis, initiative and occasional European leadership): the permanence of those conditions for all the duration of the decision-making and ratification of a given proposal.

If the socially perceived crisis is resolved, or the social perception of the problem decreases, or the occasional European leadership is missing, the initiative that linked these two elements will be unlikely to have a positive outcome. For example, the fall of the EDC showed two of these circumstances: when the French National Assembly voted, the Korean war was over and there was hope for better relations with the USSR after Stalin's death (the crisis was solved, and the social perception of the need of a European common defence consequently decreased), and there were throughout the period several changes of governments in France, causing the exclusion of both Pleuven and Schuman – who had provided the initial occasional leadership - from the government.

This fourth aspect is obviously very relevant for the effective results of decision-making, but not for the conceptualization of the conditions that can produce an advance of the unification process. The schema crisis-leadership-initiative substantially aimed at identifying the conditions when states and national governments may accept a transfer of competences and/or powers to Europe - developing the paradox proposed by Spinelli of nation states as both instruments and obstacle of the unification process. Under normal circumstances, the states represent an obstacle because they want to maintain their sovereignty. However, faced with a socially perceived crisis on a supranational problem, it is possible to witness the emergence of an effective European occasional leadership in at least one member state or in the European Union institutions, that can trigger a decision-making process which, though dominated by the states, can lead to an advance in the unification process.

This conceptual schema therefore identifies various functions – that can be performed by different actors in different phases - needed to advance the integration process. This schema brings together the useful insights of a number of theories with regard to the main actors in the process.

The social perception of a crisis on a supranational problem can be promoted by European and federalist figures and movements, by parties, and even governments needing to move the responsibility of the crisis to others - Europe – or by organized social groups particularly affected by the crisis and aware of its supranational character, and the mass media related to all these subjects. This perspective goes beyond the analysis of the influence of specific political or social milieus on governments' policies, proposed for example by Moravcisk. It emphasizes the need to identify - on a case by case basis – the relevant actors, without neglecting the possibility that they be relevant in a single case or on several occasions, but not necessarily at all times or in an uninterrupted manner.

The role of farmer organizations in the birth and in the initial development of the CAP, including the institutional strengthening related to it, cannot for instance be ignored, although they did not play a significant role in any other case. The role of European and federalist personalities and movements with regard to the ECSC, the ECD attempt, Euratom, the direct election of the European Parliament, the creation of the European Council, or the creation of monetary union was certainly relevant (See Burgess. 1986; Burgess, 1989; Burgess, 1995; Burgess, 2000; Caraffini, 2008; Graglia, 2008; Landuyt,, Preda (eds), 2000; Levi, Pistone (eds.) 1973; Lodge, 1984; Majocchi, 1996; Monnet, 2007; Paolini, 1988; Paolini, 1989; Paolini, 1994; Paolini, 1996; Pasquinucci, 2000; Pinder, 1991; Pinder, 1993; Pinder, 1996; Pinder, 1997; Pinder, 1998; Pistone (ed), 1975; Pistone, 1982; Pistone, 1992**;** Pistone 1996**;** S. Pistone, *1*999**;** S. Pistone and Malandrino (eds.), 1999**;** Preda, 1990 and 1994), although in other phases or over other issues they failed to play a decisive role.

The federalist tradition believes that new integrative proposals are hardly likely to come from the national politicians busy with the struggle for national power - which they will be reluctant to give up once they get it. Therefore, the specific task of the European and federalist personalities and movements is that of "initiative" (Albertini 1961, 1969, 1980): the development of a proposal to solve the crisis through an advance of the unification process. This is reasonable to be expected from them, because it is their political priority and they are autonomous in relation to national power (Albertini 1955). This autonomy permits a dialogue with all political forces, being aware that decisions concerning European integration must be potentially bipartisan, since they involve the national governments of several countries and of different political families.

The European and federalist organization thus constitute the political class of European unification, trying to recruit and mobilize organisable pro-European personnel – politicians in favour of integration, even if they do not conceive it as their priority, and people who have abandoned national political life because of the crisis of the nation state but which have not yet realized the federalist alternative – and the pro-European sentiment diffused in the population at large (Albertini 1955, 1965 and 1966).

Obviously, federalist authors have always stressed the role of the European and federalist personalities and organizations. However, this emphasis is not necessary for a theoretical scheme aiming at conceptualizing the conditions of possibility for advancing the process. To this aim it is sufficient to identify an initiative, an idea pursued by a person or a group that can be accepted in the public debate, can be endorsed by a European occasional leadership, and then possibly adopted. For example, the neo-functionalist tradition has emphasized the role of the Commission as a guide for the integrative process in different periods, especially under the leadership of Monnet, Hallstein and Delors. It should be noted however that these figures are often considered as federalist personalities as well (see Monnet, 2007; Roussel, 1996 ; Bossuat, 1999 ; Duchêne, 1994; Fontaine, 1988 ; Fransen, 2001; Hallstein, 1972; Loth et al., 1998; Malandrino, 2005; Delors, 2009; Milési, 1985; Grant, 1994; Ross, 1995; Drake, 2000). The European Parliament, after its direct election, was the main actor of several initiatives, starting from the Treaty of European Union, whose idea came from a federalist leader like Spinelli (See Albertini, 1985; Albertini, 1986, Burgess, 1989; Burgess, 2000; Dastoli, Pierucci, 1984; Lodge, 1984).

As for "occasional" European leadership, it requires a certain power, and can therefore be exercised only by a national government, guided perhaps by a prime minister or foreign minister,(or less probably by a national parliament), the Commission, or the directly elected European Parliament. Precisely for this reason some historians and theorists have emphasized the role of national political leaders or of the leaders of the European institutions. Just as federalist scholars stress the role of federalist personalities and organization, intergovernmental theories, focusing on the intergovernmental negotiations that lead to a decision, naturally emphasize the role of governments in this phase and eventually come to recognize the existence of a European "occasional" leadership. However this is just the final stage and condition for the advance of the

integrative process. Such approaches are ill-suited to account for other fundamental issues, such as the timing of integration.

Moravcsik for instance argues on the one hand that the convening of an Intergovernmental Conference (IGC) by majority voting at the European Council in Milan in 1984 was unprecedented and that for few days it was not clear whether the Great Britain would have join the IGC. However he does not wonder why such an extraordinary event took place, and simply explains the subsequent result of that ICG by a normative convergence of the main governments on the neo-liberal agenda proposed by Mrs. Thatcher and the U.S. President Reagan, in the form of the Single Market project Moravcsik 1991 and 1998). But this analysis is not sufficient to explain the the rupture of the Luxembourg compromise with a majority vote on the convening of a IGC. Intergovernmental theories, and especially the sophisticated liberal intergovernmentalism developed by Moravcisk, are very useful and effective to explain the negotiations that lead to a decision in which the national governments are the decisive actors. However this is just the last step in a much longer decision-making process involving many different actors at various times and stages of the unification process, which cannot easily be explained from a purely intergovernmental perspective.

2. The European response to the recent crises

The analytical scheme developed so far suggests that a socially perceived crisis is a necessary if insufficient condition to produce a new stage of the process. Crises open up a window of opportunity for political entrepreneurs to propose a new initiative aimed at solving the crisis. And this initiative will have a chance to be adopted if a European occasional leadership – provided by a national government or a European institution – supports it and put it into the official political agenda. It is time to test this theoretical scheme on the current situation facing the EU.

Since the beginning of the financial and economic crisis in 2008, the European Union has been in a permanent condition of crisis and uncertainty. Officially the whole world is facing the crisis, but in many emerging countries this has meant only slower growth, rather than a significant recession. The crisis hit Europe particularly hard for

several reasons, but there is not enough social perception of the main reason: Europeans live with a single market, a single currency, but with 27 separate national economic, fiscal, industrial policies. This is a perfect recipe for European economic decline to continue.

2.1. The European response to the economic and financial crisis

The collapse of Lehman Brothers opened up a deep financial crisis which impacted dramatically on the world economy, making growth and employment plummet. The world resisted the protectionist temptation, contrary to the 1929 crisis, and there was some measure of coordination in identifying the general direction in which answers should be sought.. The results were rescue plans for the financial sector and stimulus packages for the economy.

Even if the private and public savings in the US are lower than in Europe, the US were able to launch a plan worth about 5,6% of their GDP. China could do even more (7% of GDP), as a result of its high savings. Europe's plans amount only to 1,5% of GDP. This is partly due to the fact that Europe has more robust automatic stabilisers, inherent in its more generous social security provisions compared to other areas of the world. However, the difference between Europe and the other main economic areas, exemplified by the overall small amount of extra resources Europe devoted to the crisis response, remains staggering.

Fundamentally, Europe lacks a European government to develop, launch and run a significant plan. No European institution is yet endowed with the relevant fiscal powers and the corresponding democratic legitimacy. At the same time national governments are constrained by the Stability and Growth Pact and cannot act either. Nor is the national level the appropriate one, considering the interdependence of the European economy, entrenched in the Single Market and the Single Currency. The Pact is necessary to avoid "beggar your neighbour" policies, but it is clearly insufficient. It is only a limited surrogate to a proper European economic and fiscal policy. The contradiction of a European currency without a European government has started to emerge in all its dramatic significance.

Faced with this crisis the European institutions retreated, leaving the floor to the national governments, which took the issue in their hands with a special meeting where they managed to agree only to inform each other about the measures each will take: hardly a significant form of coordination. The domino effect provoked by one country providing a full guarantee on bank deposits while the others initially did not, showed the ineffectiveness of this method. The Europeans should have learned that mere cooperation or coordination does not work, because the complete failure of the Lisbon Agenda – which was supposed to make the EU the most dynamic, innovative and competitive economy of the world by 2010 – can be attributed precisely to the open method of coordination on which it was based, which refused to endow the European supranational institutions (Parliament, Commission and Court) with adequate powers and to introduce Qualified Majority Voting into the Council on those issues.

All this resulted in a dramatic failure to launch a European rescue plan aimed at a robust recovery of the European economy. National governments increased their deficits, putting aside the Stability and Growth Pact, essentially to finance temporary social measures, such as longer unemployment subsidies and similar instruments. A vast investment plan, as proposed by the Delors Plan as long ago as 1985, failed to materialise.

This crisis was socially perceived, but its European rather than national dimension was not. Unfortunately, no successful answer is possible at the national level and this provokes a substantial lack of responsibility and action. Significantly, at the first G20 attended by Obama, the Italian Prime Minister told the new American President that the crisis came from the US and that it was upon the US to bring the world out of it. This was a blunt expression of the general feeling of the European citizens: put the blame and the responsibility for finding a solution on someone else rather than identify and develop the instrument and policies that Europe itself could adopt to lead the world out of the crisis. This attitude is well exemplified by the European demand to reform the rules of the main international organizations and the regulation of the financial market,without a parallel willingness to merge European quotas in the International Monetary Fund and the World Bank, a change which would make the EU, rather than the US, the main share holder and agenda-setter in these bodies.

Similarly, Europeans failed to respond to the proposal from the Governor of the Bank of China for a structural reform of the international monetary system, towards a

multipolar and multilateral structure, based on the use of the Special Drawing Rights of the IMF for international trade and transactions. (See a series of speeches and short papers delivered by Zhou Xiaochuan, available at http://www.pbc.gov.cn/english/, especially http://www.pbc.gov.cn/english/detail.asp?col=6500&id=178 where he refers explicitly to Keynes and Triffin studies; see also Mosconi, 2009; and even before the crisis Iozzo, and Mosconi, 2006). The proposal can be viewed, cynically, as a way to socialise globally the American debt to China, but such an interpretation would only grasp a part of the picture. Obviously, China is today the main American creditor, as Japan and Europe have been at times in the past. Therefore China has the problem of finding a way to constraint the US to adopt sound policy and to avoid devaluing the dollar, which Americans like to consider "our currency and your problem". But this Chinese aspiration is in fact in the interest of the whole world too.

Interestingly, even in the US the elite has shown a renewed consciousness of the fact that the USA's role of issuer of the main reserve asset and the pivotal role of the dollar in the international system, was one of the structural factors which made the crisis possible (Dunaway 2009, Council of Foreign Relations Special Report n. 45). This situation provides the US with the possibility to issue liquidity on the basis of the world economy demand, rather than on the US economy's capacity, and to finance accordingly structural imbalances in the American public budget and in the current account. However, the Report considers such a feature of the system impossible to reform, and therefore only recommends each country to redress those imbalances because it is good for the world. This well-constructed economic argument falls unfortunately against the diktat of political argument: why should an American president decrease the chances of winning the next election – his own re-election or that of the Congress – by raising taxes or cutting expenditure to finance his preferred programs, if he can simply have the rest of the world paying via cheap credit, coupled with the possibility to devalue the dollar at a latter stage to avoid paying it back to a certain extent? This explains very well the policy of butter and cannons, tax cuts and vast increases of military expenditure, which followed 9/11. American and Chinese both recognise the structural conditions making possible global imbalances and the credit bubble, but their policy recommendations are as divergent as their interests.

The problem with Europe is that it has proved quite unable to agree upon an interpretation of the crisis and of its interests, and thus lay the groundwork for a truly European strategy to deal with the crisis. Some European think tanks have joined this global debate – for example the Triffin Foundation and the Compagnia di San Paolo held a conference in Italy last May to launch the ""TRIFFIN 21' An Initiative revisiting the arguments for a global monetary anchor" – but at the official and political level Europe was substantially absent, thus de facto supporting the current system.

In other words, the first wave of the economic and financial crisis produced rather limited answers in Europe. European and federalist personalities and organizations called for some form of European economic government. They produced some documents and action, just as different European think tanks made proposals with the same aim. The ECB asked for more power to supervise the banking system, and also demanded to complement monetary union with a fiscal one, proposing the "equivalent of what we would have if we were in a fiscal federation … A federal solution would require a huge leap forward at the institutional level. It seems to me that a fully fledged political federation is not, at present, wanted by the countries themselves, speaking as a citizen, it is a matter of regret to me that the chance to take further steps was not seized in the 1990s" (interview by Governor Trichet, available at http://www.ecb.int/press/key/date/2010/html/sp100713.en.html). The asymmetry, or contradiction, of a monetary union without an economic and fiscal one, had obviously started to make itself felt. . The Commission, almost turned into a secretariat of the Council under Barroso's presidency, was essentially unable to bring forward significant proposals. Also the European Parliament, busy with the 2009 election, was unable to take significant action. No European occasional leadership emerged to face the crisis

2.2. The European response to the sovereign debt crisis

On the top of the economic and financial crisis, the European sovereign debt crisis came this year to threaten the achievements of the European construction. The very existence of the Euro seems in peril. Competent commentators and scholars debate the issue. Still the broad public debate treats the problem as if it was only the issue of one or

more countries having taken an irresponsible fiscal policy, as if at stake was Greece alone rather than the survival of the Euro and the European Monetary Union. From such a distorted perspective German public opinion's hostility to any rescue plan can be easily understood. German Chancellor Merkel even allowed the crisis to get worse, to avoid providing any help before the election in North Rhine-Westfalia, from which her majority in the second chamber depended. The spread between German and Greek bonds was thus allowed to increase further, making the need for a European rescue of Greece all the more necessary and expensive. Eventually, three days before the regional elections, the EU was forced to take action and on May 9 decided to set up a 750 million € fund. The European markets rebounded , only to start a new decline the day after, having seen that Europe had found some money, but had no real new proposal in terms of policies and institutions to deal with this kind of problems now and in the future.

The way this crisis was handled suggests a deep misunderstanding of the whole project of monetary union and of European unification, and a complete lack of European leadership. It is worth recalling the debate which accompanied the establishment of the EMU and the creation of the Euro from the Maastricht Treaty onwards. It was clear that the EMU was a crucial step towards political Union. Eventually this could bring different people to be in favour or against the EMU, precisely because of their attitude towards political union. But this link was recognized by both nationalists (For example see Cash, 1991, especially chapter 3) and federalists (For a theoretical account of this link from a federalist perspective see among others Albertini 1973, 1976, 1979, 1990, now all in Albertini 1999a), and by politicians (For example see Portillo, 1998, 9 and his quotation of the German Chancellor Kohl and President of the Bundesbank Tietmayer at p. 17), academics (for example see Buchanan, 1990. Neo-functionalism developed the concept of spill-over to explain the automatic and smooth passage from economic to political integration), and economists[III] alike, with the exception of some British pro-Europeans who downplay the significance of this link in the attempt to persuade the Eurosceptic British public to join EMU (see Duff (ed.), 1998). This link is based on the consideration of the strict relationship between monetary and economic and fiscal policies, and to some extent to foreign policy as well, because the EMU creates the possibility of a unitary representation of the Euro in the International Monetary Fund (IMF) and the World Bank,

thus requiring a much stronger co-ordination of national foreign policies and possibly a real single European foreign policy.

The lack of comprehension of something which was clear when monetary union was established – but for which there was not sufficient political will, otherwise the economic and political unions would have been established together with the monetary one – is putting the Euro at risk. Seen from the outside the European behaviour is really incomprehensible. California is almost bankrupt, like Greece. And if it was an independent state it would be the sixth largest world economy, much larger than Greece. But nobody believes that the existence of the Dollar is at risk, as there is an American federal government. The lack of a federal government in Europe allows a small economy such as Greece to endanger the whole monetary union.

This issue is not limited to the economy. If one looks at Greece's budget, the amount of military expenditure is astonishing. Given the tension with neighbouring Turkey over Cyprus, Greece is the EU country with the highest GDP% on military expenditure, above 4%. Overall, while the EU has no military expenditures, its 27 member states together make up for almost 50% of US military expenditure, with an actual capability which is much less than proportional, but with more theoretically active personnel, (this is revealing of about the amount of budget devoted to wages and the amount devoted to equipment and research as compared to the US). Security is just another public good which could best be provided at European rather than national level. Given the current level of expenditure and capacity, a European single defence could even allow for both a decrease of expenditure and an increase of capabilities! And it would also contribute significantly to the structural reduction of the Greek deficit, as the contribution of Greece to the European defence would presumably be proportional to its population and economic performance.

The sovereign debt crisis has put at risk the Euro and many other countries in financial difficulties. Europeans have had to take action, starting a new debate which recognised the need for a European economic government or at least a European economic governance.. What form these new structures should take is, however, far from clear.

The French request for a European economic government received the German answer: "yes, it's us", i.e. the national governments within the European Council. Not

anything new, as this institution still decides very often by unanimity, and therefore often does not decide at all. Confronted with the first crisis it managed only to agree that each state should inform the others of its action: not a very promising record to deserve a candidacy as the new European economic government. Furthermore, the European Council's deliberations still take place to a large extent behind closed doors, and therefore with little transparency and democratic participation. A Task force chaired by the European Council President, Van Rompuy, is supposed to present more detailed proposals next autumn.

The European institutions have intervened with various degrees of innovative capacity, political courage, and guiding philosophy. The European Commission presented in May its proposal for "Reinforcing economic policy coordination" (Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the Economic and Social Committee, and the Committee of the Regions of 12/5/2010). But coordination was the maximum objective the Commission put forward, far short of the idea of a European economic government, which was already at the centre of the public debate. The main proposal of the Commission was the creation of a European semester to synchronise the preparation and scrutiny by the Commission and all national governments of the budget proposals of each member state. Other proposals were to ensure more strict adherence to the Stability and Growth Pact, with special relevance to the debt criterion and by limiting the access to the EU budget for non-complying member states, and the creation of new rules about when and hot to provide financial help in terms of loans to a member state in financial difficulties, a step which essentially codified the decision taken at the 9th of May European Council.

Faced with such a weak proposal, the European Central Bank, which bears alone the burden of steering the Euro, put forward its proposals for "Reinforcing Economic Governance in the Euro Area". Many of the proposals were actually quite similar and convergent with the Commission proposals, but often more detailed and nuanced, for example regarding the enlargement of the range of sanctions that can be used within the Excessive Deficit Procedure. New proposals were the strengthening the Eurogroup role in financial surveillance of member states, the creation of an independent EU fiscal agency and the possibility for the Commission to present proposals about sanctions that can be modified only by unanimity within the Council and approved by qualified majority – a

power that the Commission did not dare ask for itself. Overall, the ECB proposals go further than the Commission in empowering Europe to deal with the crisis. The overall philosophy however, is absolutely technocratic. The Parliament is never mentioned, and there is no reference to the principle "no taxation without representation". The idea of an independent fiscal agency and of stricter European control over national budgets without any involvement of the European and/or national Parliament looks democratically inconsistent, and thus hardly practicable.

There is however, another issue conspicuously absent from all the proposals mentioned: the European budget. This ridiculously small instrument (1% of the EU GDP), which has decreased over time while each new Treaty has enlarged the EU competences, which has almost lost all its "own resources" in the wake of the world-wide liberalization process, is only a sum of national contributions that each country want as small as possible. The fact that no significant European government, but probably not even governance, can be achieved without a reform of the budget, seems not to figure in the current debate. Nevertheless, several prominent economists and think tanks have presented proposals to fill this gap, for example Notre Europe launched a debate on this issue starting with a paper by Alfonso Iozzo, Stefano Micossi and Maria Teresa Salvemini (2008).

In a fascinating article Steingart suggests that "Birthdays are fun; a birth itself is not. There's a lot of screaming and groaning, and even in the easiest deliveries, there's always the fear that something will go wrong. The birth of a state is no less difficult. Indeed, what pessimists — including many here in Germany — see as an existential crisis for the continent is really just the latest stage in the birth pangs of a new country. While we should of course worry about Greek debt, we should also have hope that we are witnessing the end of the euro zone as an abstraction and the birth of the United States of Europe". This suggests what Europe needs, more than what we are witnessing, unfortunately. Looking at the proposals on the table there is ground for concern about the chances of this delivery finally taking place. The European unification process has been in some ways the mother waiting to deliver since the 9th of May 1950 when the Schuman Declaration paved the way to the first European Coal and Steel Community, considering that start as "the first concrete foundation of a European federation" (available at http://europa.eu/abc/symbols/9-may/decl_en.htm). Indeed by putting at risk the Euro this crisis is more existential than others previously. The contradiction between the single

market, the single currency and a number of different economic and fiscal policies is structural and now publicly exposed. Significantly, one of the main Italian newspapers Il Corriere della Sera, recently had an opinion poll on its web-site asking readers to express their opinion on the creation of a European federal government to avoid other crises like the Greek one, and got an 85% positive answer. To create a European economic government implies a revision of the budget, the attribution of fiscal powers to the EU – which the first ECSC had, together with the possibility of making debts – and a democratic system to decide on these crucial issues. Probably, such a decision would involve also a further transfer of competences to the EU in areas such as defense for which the national level is clearly sub-optimal..

3. Conclusions

The crises are there. Some initiatives are on the table. The official ones are largely insufficient in terms of effectiveness and democratic legitimacy. The public debate in the papers and in the think tanks has however highlighted some of the key issues, from the reform of the budget to the need of a democratic system of government. So far it is difficult to identify any candidate to take the role of European occasional leadership. The conditions for an advance in the unification process highlighted in the theoretical interpretative scheme developed in the first part of this paper do not seem to be present.

But the Euro is still in trouble, the crisis is still far from being solved, and this may eventually push the European political leadership to finally find the courage to do what it takes: to renounce to the last simulacrum of a substantially empty national sovereignty to create a federal government, i.e. a democratic multilevel system of government. There can be glory waiting around the corner for some of the European political leaders, if they will finally decide to help the delivery of this long-awaited baby.

[1] Mario Albertini (1919-1997) was professor of Political Philosophy at the University of Pavia and one of the main leaders of the European federalist organizations. He wrote many articles about European integration, mainly in Italian. Thus he is little-known in the English language based international academic debate. Still he was a main figure in the Italian debate and after his death two selections of his most important articles were published in 1999, and this year the last volume of all his works was published by Il Mulino, edited by Nicoletta Mosconi†. He never wrote a systematic book about European integration. His theory must be reconstructed from a number of articles published since the late 1950s. I am currently working on an

anthology in English of some of his most interesting papers

[III] See for example, Issing, 1996; and Padoa Schioppa, who played a significant role in the establishment of the EMU and stressed several times that the ECB risked to be isolated rather than independent, proposing a strengthening of the other European supranational institutions (see for example one of his lectures of 1999 available on the internet at http://eurplace.org/diba/cultura/fagg/padoas.html or the article Questo mondo a due velocità, in Il Corriere della Sera 31/12/1999; and more recently his 2006 Altiero Spinelli Lecture at the Centre for Studies on Federalism, available at http://www.csfederalismo.it/attachments/023_Lecture%20Padoa-Schioppa%20eng.pdf).

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Global Imbalances and the Transition to a Symmetric World Monetary System

by

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Abstract

This article investigates some of the causes of the financial crisis – global imbalances and unsatisfactory regulation of world liquidity – and supports the need to reform the present asymmetric international monetary system based on the dollar as a dominant reserve currency. Part I examines global imbalances, the causes of the US external deficit and the consequences of the international monetary asymmetry. Part II seeks to overcome this asymmetry and the Triffin dilemma by examining two models for a new world monetary system: an international model, without a world central bank (WCB), and a supranational model with a WCB. Two urgent reforms are proposed: the adoption of a global monetary target for the industrialised countries and the issuing of UN Bonds to allow countries to substitute dollar reserves with SDR reserves.

Key-words:

Financial crisis, global imbalances, international monetary asymmetry

"The problem of maintaining equilibrium in the balance of payments between countries has never been solved … The failure to solve this problem has been a major cause of impoverishment and social discontent and even of wars and revolutions … To suppose that there exists some smoothly functioning automatic mechanism of adjustment which preserves equilibrium if only we trust to methods of laissez-faire is doctrinaire delusion which disregards the lessons of historical experience without having behind it the support of sound theory."
J. M. Keynes, First Memorandum for an International Currency Union, 1941

1.Introduction[I]

The dramatic consequences of the financial crisis are visible: bank defaults, collapsing industrial production, rising unemployment and social discontent all over the world. Identifying the causes is a very difficult task, but one that is essential if the reforms necessary to avoid a new world crisis are to be put in place. In this article, we investigate some of the causes – global imbalances and unsatisfactory regulation of world liquidity – and the need for reform of the present asymmetric international monetary system, based on the dollar as a dominant reserve currency. Finally, we propose a new, symmetric system, founded on equal participation by all the countries of the world in its management[II].

In London, the G20 meeting of April 2009 invited the Financial Stability Board to put forward proposals for monitoring global financial stability and for expanding its membership to include representatives from all G20 countries, effectively turning the FSB into something like an overarching global financial regulator. In effect, since the banking and financial systems already have worldwide reach, the new regulations should extend to all the nations of the world. However, such regulations cannot be limited to the micro-level, but should equally concern the macro-level. The link between the two levels is highlighted clearly in the De Larosière Report (2009) in paragraph 32: "The crisis

eventually erupted when inflation pressures in the US economy required a tightening of monetary policy from mid-2006 and it became apparent that the sub-prime housing bubble in the US was going to burst amid rising interest rates. Starting in July 2007, accumulating losses on US sub-prime mortgages triggered widespread disruption of credit markets, as uncertainty about the ultimate size and location of credit losses undermined investor confidence. Exposure to these losses had been spread among financial institutions around the world, including Europe, inter alia via credit derivative markets".

An inquiry into the role of global imbalances between emerging market and industrialised countries, and into the management of world liquidity can shed some light on the crisis. There is lively debate among economists over the existence of a global saving glut that originates mainly in Asian countries and feeds the US current account deficit. The strong flow of finances from emerging countries into the American economy has helped to bolster the market for Treasury bonds and even to smooth interest rates. In the USA, the macroeconomic environment has provided a good breeding ground for innovative financial techniques. Hence, there is some reason to agree with the conclusions of an article that *The Economist* (2009) devotes to the problem of global imbalances: "America, Britain and other deficit countries have drowned themselves in cheap credit from abroad. Because the structural forces behind the global saving glut are unlikely to abate quickly, there is a real risk that the dangerous imbalances will persist – with America's public sector as the new consumer of last resort. It would be foolish to focus on fixing the financial industry only to find that the public finances are left in ruins".

As a result of these complexities, reform of the international economic order should concern not only the monetary system, but also the – private and public – financial system. The task is surely very complex and difficult. Nevertheless, there is a starting point. At Bretton Woods, in 1944, the architecture of a new international monetary system was laid down. On this pillar, the post-war economic order was slowly shaped. The GATT became the framework for important tariff cuts. Europe was able to abandon bilateralism and autarky, and the process of European integration began. In the following decades, an interdependent global economy emerged. Today, we can follow the same path to reform the old international order. At the London G20, Russia and China proposed that an alternative to the dollar as a reserve currency be found. This problem cannot be ignored. Indeed, the financial crisis and fears of an inflationist policy to lift the US economy out of

stagnation are good reasons to question the role of the US Fed as central bank to the world and of the dollar as an international reserve currency. Besides Russia and China, Europe too should take an active part in such reform. The European Monetary Union (EMU) represents a new model of monetary cooperation among nation states. The world economy needs a similar form of monetary cooperation.

The aim of this essay is not to design a precise plan of reforms, but only to outline two possible paths and to clarify the relationship between political and economic problems: the problem of monetary sovereignty cannot be ignored. In the last paragraph, we put forward some urgent reforms. A climate of confidence and positive expectations is a fundamental component of any recovery policy. The will to cooperate, heralded in London, is an empty box without new institutions. A global economy needs global governance.

Part I – Global imbalances

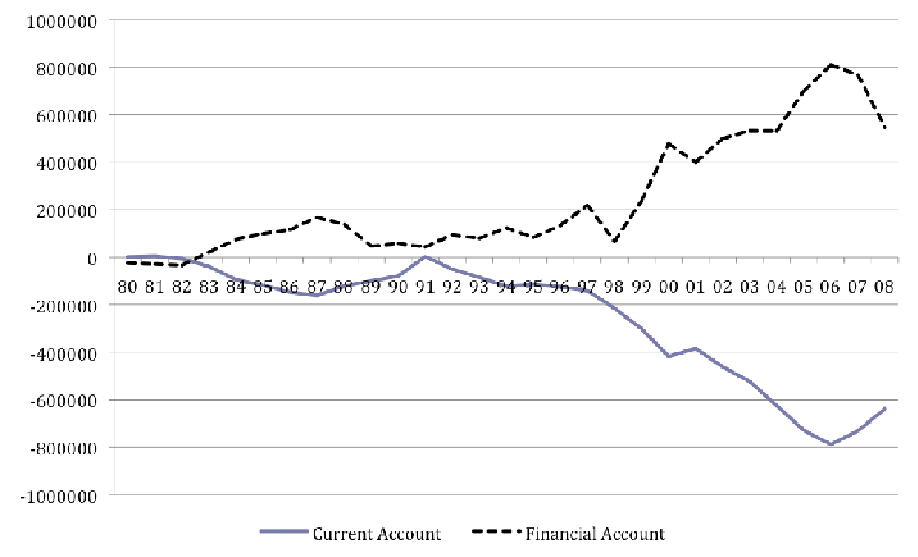
As mentioned in the introduction, in 2007 the burst of the subprime bubble in the USA was the event that, in the space of just a few months, led to the US banking system collapse of 2008 and gave rise to the severe international economic crisis we are currently experiencing. However, its subsequent worldwide spread was also the result of external real and financial imbalances dating back years: a growing American current account deficit financed with a huge inflow of foreign capital, mainly from Asian and oil producing countries.

A current account and trade deficit has been a "standard" feature of the US economy since 1982, but it was in the 1990s that a steady deterioration began, reaching an unprecedented negative level in 2006. This trend is depicted in figure 1 along with the corresponding, increasingly positive financial account balance that represents foreign funding of the trade deficit. Since the current account balance drives the accumulation/decumulation of foreign assets[III], the necessary implication of a continuous deficit is that the US net foreign asset position is deteriorating and the stock of gross foreign debt is becoming ever bigger. US Treasury data shows that, at the end of 2008, foreign debt was above 13 trillion dollars and its ratio to GDP was very close to 100%: at

the present time the USA is thus the biggest debtor in the world economy. Turning to the real side of the economy, the huge trade deficit means that for many years the USA has been the "buyer of last resort" in the international trade arena, allowing exporting emerging countries such as China to grow at a very high rate. As a result, the recent slowdown of domestic demand in the USA is causing a large negative real shock that is fuelling the spread of the American recession worldwide.

The above picture raises several questions we shall try to answer in the remainder of these sections: how could the USA sustain such a prolonged and growing foreign imbalance without running into a balance of payment crisis? Since current account deficit has to be financed, why were foreign investors so willing to finance the American economy, despite clear signs of rapid current account deterioration and foreign debt accumulation? Lastly, can the world economy overcome the crisis without the long-term rebalancing of the US external position and reform of the international financial and monetary systems? We would like to stress that the last question is linked to the first two because one source of global imbalances is the asymmetric nature of the international monetary system in which a national currency, the dollar, plays a central role. As we shall explain later in the paper, it was because of this asymmetry that, in the 2000s, emerging countries accumulated dollar reserves that were reinvested in the US financial market. As a consequence, a continuous flow of foreign financial investments allowed the USA to ignore balance of payment external constraints and favoured the financing of the sub-prime bubble. Now it is clear that this kind of game has to stop. However, if we want to prevent the recent pattern of global imbalances from appearing again in the future, fundamental changes and reforms of the international monetary system have to be implemented.

Figure 1: US Current Account and Financial Account (1990-2008, USD billions)

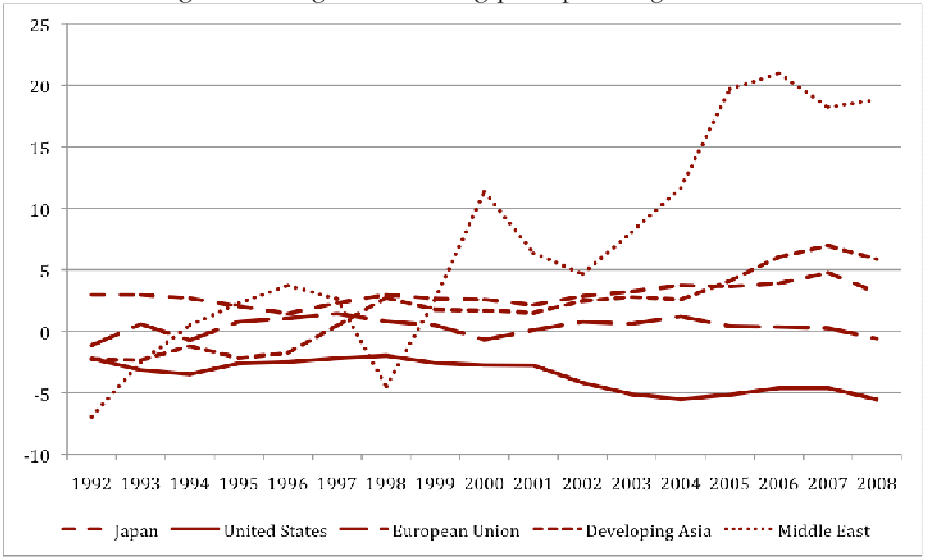


Source: US Census Bureau and FED

2. The causes of the US external deficit (1): the saving glut hypothesis

The recent debate over the causes of the US current account deficit focused on the saving-investment disequilibrium issue and the emergence of the so-called "Bretton Wood II" system among Asian countries (mainly China) and the USA[IV]. The starting point of the saving-investment debate is quite simple. According to national accounting definitions, in the aggregate the current account balance of a country is equal to the difference between national saving (*S*) and national investment (*I*), $CA = S - I$. Therefore, a current account deficit occurs whenever domestic investment exceeds domestic saving. The crucial point, however, is to understand why saving has been systematically below investment in the USA. Does it depend on internal factors or is it the result of international disequilibria to which the USA economy has passively adapted? According to Bernanke (2005) the latter is the case. This view, known as the Global Saving Glut hypothesis (GSG), states that the US current account deficit is the final result of an excess of world saving that was invested in the efficient American financial market, keeping long run interest rates at a very low level. Low interest rates in turn caused an expansion both of domestic credit demand and of household consumption that depressed saving and gave rise to the current account deficit we are witnessing.

Figure 2: Saving – Investment gap as a percentage of GDP



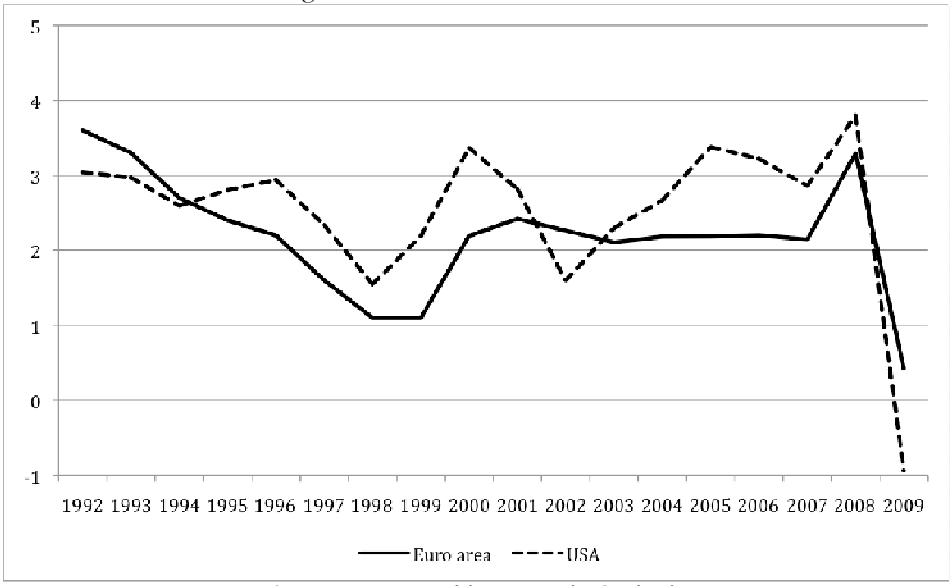
Source: IMF World Economic Outlook

What can we say about the GSG hypothesis? Obviously, at worldwide level saving and investment must be balanced so that a saving glut cannot arise, but if we look at the actual distribution of saving and investment we can easily identify surplus and deficit areas. As shown in figure 2, Asian and oil producing countries have an excess of saving over domestic investment while in the industrialised countries group, only the USA displays a deficit since Japan has a surplus and the EU area is roughly in equilibrium. Looking at the specific US situation, we can also see that a negative saving-investment gap already existed in the 1990s but that it was quite stable up to end of the decade, oscillating slightly between -2% and -3%. A common explanation of this trend is that huge investments in ITC were made in the US economy during the 1990s, raising the GDP growth rate and making the country an attractive place for foreign investors seeking high real returns. In this view, it was a rise in investment and not a fall in saving that drove the saving gap, after the positive Federal Budget contribution to national saving was accounted for[V]. At the beginning of 2000s, however, the gap grew steadily both due to the deterioration of the Federal Budget under the Bush Administration and a steady increase in the American household consumption rate.

The fact that the lack of saving is essentially an American problem seems to support Bernanke's explanation of the US current account deficit as a passive response to external dynamics. However, if he is right, we should see a strict time sequence between

the trade surpluses of other countries and the decrease in the American saving rate. Since China has become the largest surplus country engaged in bilateral US trade in the last ten years, moving from fifth to first position in total bilateral American trade, we should observe a close relationship between the high Chinese net saving rate and the low American one. However, as the Governor of the People's Bank of China, Zhou Xiaochuan, (2009) recently pointed out, in the USA the saving rate actually started to decline *before* the surge in the Chinese current account surplus. In fact, in the 1990s, the US saving rate as a percentage of GDP increased, reaching 18.227% in 1998; subsequently it declined steadily, mainly due to a reduction in the household saving rate (IMF World Economic Outlook). On the other hand, it was only after 2001 that the Chinese current account surplus soared, from a mere 1% to about 10% of GDP in 2008. Domestic factors seem therefore to be as important as international ones in explaining the recent external imbalances of the US economy. Saving surpluses outside the USA couldn't have caused such a huge trade deficit without a policy choice by the Fed to accommodate the rapid growth in the supply of credit that ultimately led to the sub-prime bubble. In other words, domestic monetary policy along with household attitudes toward debt-financed consumption played an important role in the dynamics of US internal and external imbalances.

Figure 3: US and EMU inflation rates

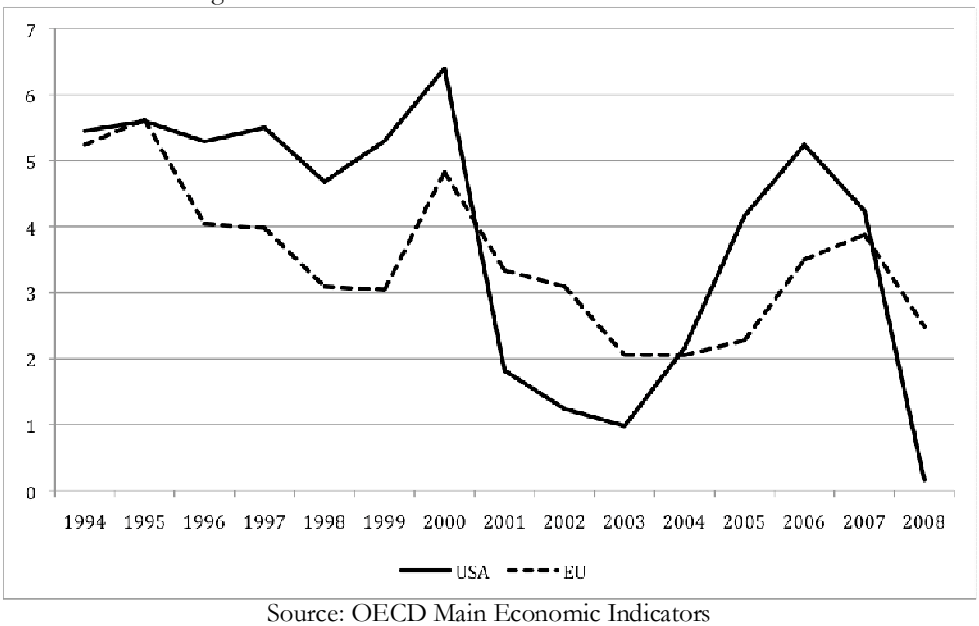


Source: IMF World Economic Outlook

The Fed pursued expansionary policies throughout most of the 1990s and 2000s. Such a stance in monetary policy shows up in figure 3, which depicts annual consumer price inflation rates for the USA and the EMU area from 1992 to 2009[VI]. In the sub-period 1995-2008, with the exception of 2002, US inflation rates were above EMU rates. A look at the 2000s shows that, between 2002 and 2007, the US inflation rate almost doubled while in Europe inflation was stable, and slightly above the ECB target of 2%. The sharp decline of estimated inflation in 2009 is obviously a consequence of the recession caused by the current international economic crisis.

As far as interest rates are concerned, we can see a decrease in US short-term rates in the first half of the 2000s (figure 4), a period of rising US inflation. According to Taylor (2008: 2) such behaviour by US interest rates shows a sharp downward deviation from the path followed in previous years, signalling loose monetary policy. The temporary decline of inflation in 2006-2007 is, interestingly, associated with US interest rates overtaking European ones (figure 3), evidence of a tightening of the Fed's monetary policy over previous years. This increase in domestic interest rates contributed to the development of the sub-prime financial crisis. It should be noted, in fact, how the rise of interest rates in the USA after 2005 was a shock that caused widespread household defaults in the mortgage sub-prime loans market. Since real estate was the main collateral in that market, household defaults forced banks to sell a growing number of newly purchased houses, leading to the decline in house prices and to the ultimate burst of the sub-prime bubble.

Figure 4: short-term interest rates in the USA and the EU



Source: OECD Main Economic Indicators

Summing up, we think that the GSG hypothesis alone cannot explain the sharp decline in the US saving rate. Other US domestic and external factors have to be taken in account. In particular, useful insights come from the analysis of US domestic monetary policy along with an investigation into the causes that led to a situation in which surplus countries have been accumulating surpluses and have simultaneously opted to invest them in the US financial market. The latter issue has to do with the key role of the dollar in the world economy, a topic we shall deal with in the following section.

Insofar as the problem of why emerging economies have willingly been financing the US economy in the 2000s is concerned, some insight may be gained by looking at figure 2 again. It can be seen from the graph that Asian countries were importers of savings until the severe economic and financial crisis that hit the region in 1997. Subsequently, these countries increasingly became positive net savers. According to Wolf (2008), it was precisely the Asian crisis at the end of the 1990s that induced countries to switch their development strategies from a model based on domestic investments financed through foreign debt to an export oriented model in which trade surpluses and foreign asset accumulation were key ingredients. We agree with Wolf's view but we would like also to stress that the specific international role of the dollar helped the USA to attract foreign capital flows on a scale no other country could reach. The bottom line is that thanks to the asymmetric nature of the dollar standard monetary system, the USA has been so far able to

ignore balance of payments constraints that are usually binding in the rest of the world (Fiorentini 2002, McKinnon 2005).

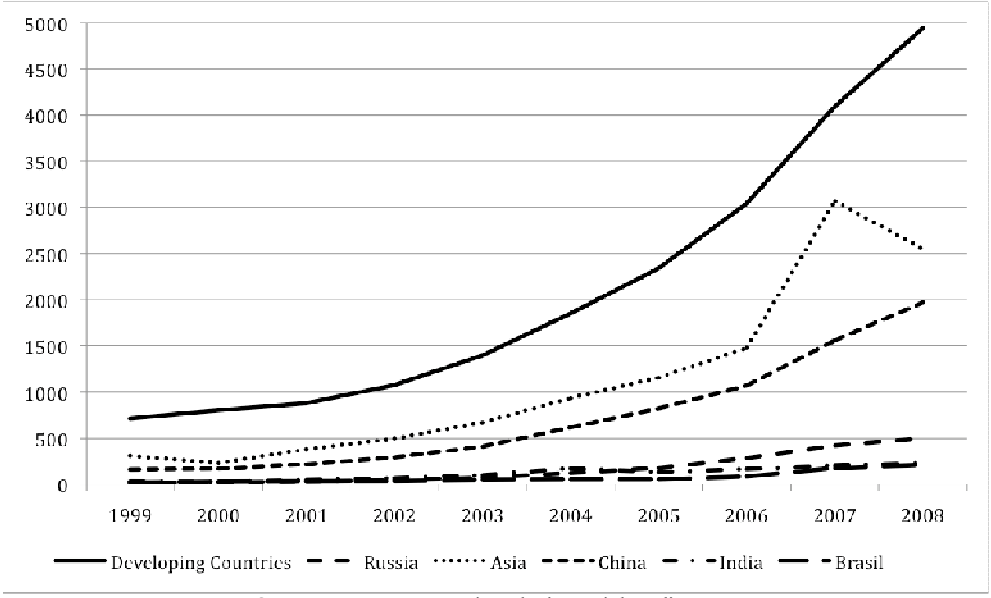
3. The causes of the USA external deficit (2): the "Bretton Woods II" hypothesis

The second explanation of the US external imbalances mentioned above, the "Bretton Woods II" (BWII) hypothesis, was forcefully expounded in a series of papers by Dooley et al (2003, 2009) and is based on the existence of an implicit bargain among emerging Asian countries and the USA. The basic idea of the proponents of the "Bretton Woods II" hypothesis is that emerging Asian countries have very high saving rates yet their financial sector is not efficient enough to transform national saving into an adequate flow of domestic investment, so that they have mainly to rely on foreign direct investments (FDI). In order to attract FDI, after the Asian crisis of 1997 these countries started accumulating foreign exchange reserves in dollars, running current account surpluses mainly with the USA. The rationale for this strategy is that if a country has enough reserves to service foreign debt, for say at least 12 months, then its solvency is well established. In other words, foreign reserve accumulation through trade surpluses is both a way to offer collateral to foreign investors and to buy assurance against sudden capital flights and financial crises. This strategy implies a constant flow of financial investment from emerging countries to the USA and a fixed exchange rate policy against the dollar that produces a "de-facto" fixed exchange rate regime in the Pacific area. China, for example, after the 40% devaluation of the renminbi in 1995, kept a constant 2.27 RMB/dollar exchange rate up to 2005 when the Chinese Government allowed it to slightly revaluate by 10% in three years, a rather modest revaluation indeed.

In this picture, the role of the US financial sector would be to transform incoming Asian saving into an outflow of efficient FDI that, going back to the originating countries, enhances the economic development of the area. Since the BWII regime is based on unilateral pegging to the dollar by countries that have bilateral trade surpluses with the USA, the consequences for the American economy are that a current account deficit necessarily arises and domestic long run interest rates are kept low. According to Dooley et al., the implicit bargain is therefore the following: the USA offers FDI, international liquidity and collateral in the form of growing dollar reserves held by Asian countries. The

latter finance the US current account deficit by buying American assets, providing a supply of low cost credit to US households and firms.

Figure 5: Holdings of foreign exchange reserves (millions of dollars)



Source: IMF International Financial Indicators

The official data available actually reveals the huge accumulation of foreign exchange reserves by developing countries. In absolute values, figure 5 shows that Asian countries, including China, are the most active players in this field. Similarly impressive is the dramatic growth of the reserve/import ratio (IMF). In developing countries as a group, the ratio started from a value of 46.3% in 1998, almost doubling in ten years and peaking at 86.7% in 2008. Even more striking is the level of that ratio for Asian countries: it rose from 58.6% in 1999 to 114.8% in 2008. This means that, today, Asian countries are able to finance one year of imports out of their foreign exchange reserves without exporting any commodities!

Complete data on the composition of central banks' foreign exchange reserves is unfortunately not available: many central banks, including the Chinese bank, disclose no information on this. However, recent estimates by the ECB (2009) show that, at constant exchange rates, about 60% of international reserves are held in dollars, with a euro share of around 30%. These shares appear to have been reasonably stable over the last decade, with no sign of diversification away from the dollar seen until now. The impact of the euro in this context was significant in 1999-2002 when its share rose from 20% to 30% of

international reserves, but in the years that followed the euro share did not change in any significant way.

The above evidence supports some aspects of the BWII story, which is less generally relevant than its proponents claim. In fact, the so-called Bretton Woods II appears to be quite specific to the USA-China link rather than global (Wolf, 2008: 145). In any case, the phenomenon of huge accumulation of dollar foreign exchange reserves in emerging countries helps us to clarify once again that the pattern of global financial imbalances is closely related to the asymmetric nature of the current international monetary system that allows one country to avoid external constraints thanks to its own currency being used and held abroad for trade and precautionary purposes. This kind of imbalance, in which the core of the world economy (the USA) acted as "buyer and borrower of last resort" by absorbing production and excess saving from less developed countries, contributed no doubt to the stabilisation of the world economy after the long wave of international financial crises that characterised the 1990s. However, such a pattern is no longer sustainable: even the reserve currency country is now facing a binding external constraint.

In fact, the USA cannot delay the re-balancing of its external position both in real and financial terms. The credit crunch produced by the explosion of the domestic financial crisis associated with the fall in US production and households real income have reduced GDP and demand for imports with a negative impact on international trade flows and financial surpluses abroad. On the other hand, foreign investors' confidence in US dollar assets has been eroding because of the fear of excessive devaluation of the dollar exchange rate. A declining dollar exchange rate is necessary in order to eliminate the US current account deficit but, at the same time, it reduces the value of US assets owned by foreign investors so that their willingness to purchase dollar bonds, securities and equities may be impaired. In the end, in the present situation we expect US consumers and firms to be unable to afford to purchase large amounts of foreign goods in exchange for cheap credit as they did in the recent past.

4. Global imbalances, sustainability and asymmetry

There are several reasons that help explain the ability of the USA to run a very long sequence of current account deficits, but the core explanation relies on the asymmetric

nature of the dollar exchange standard that has shaped the international monetary system. In some way, both the GSG and the Bretton Wood II hypothesis discussed above have as a key ingredient the willingness of emerging countries to invest their trade surpluses in the USA. In the GSG view, such willingness is due to the better investment opportunities and returns offered by the US financial market; according to the BWII hypothesis, foreign countries need collateral that is well accepted by international lenders. In any case, the USA recently attracted far more foreign funds than what would be normal for any other country.

A look at US assets held abroad shows that a large share of foreign portfolio investments consists of assets with returns that are not particularly high in comparison to those earned by US owners of foreign assets. At the same time, countries accumulating huge dollar reserves are foregoing better domestic and foreign investment opportunities since returns on foreign currency reserves are lower than returns on FDI or other securities. This fact is well documented, among others, by Gourinchas and Rey (2005) and Forbes (2008). The latter, for example, shows that in 2002-2006, total average returns (including exchange rate movements) on US assets abroad came to 11.2%, while returns on US foreign liabilities were just 4.3%. Looking at returns on private sector investment positions, Forbes finds that, when all securities (equities and bonds) are included, American investors earned an average return on their foreign portfolio of 14.3%, compared to a much lower 5.9% earned by foreign owners of US liabilities. Even worse is the differential in the case of FDI: figures are 16.3% for American investors in contrast with a meagre 5.6% on foreign investment in the USA. In general, the GSG assumption that foreigners prefer US assets because of their superior performance therefore seems not to be supported by real data (Wolf, 2008: 136). So we are back to our starting point of why international financial flows go from less developed countries to the USA. Our answer lies in the role of the dollar in the current international monetary system.

Since the end of WWII, the dollar has been the main world reserve currency; due to hysteresis, it maintained this role even after the end of the Bretton Woods era in 1971. In the international economy, there were simply no real alternatives to the dollar as a medium of exchange and a reserve currency. Even today, after the birth of the euro, the dollar is the most-used currency in international trade and finance (ECB, 2008). As issuer of the de-facto international reserve currency, the USA is able to borrow from abroad by issuing assets in its own currency. A consequence of the capability of borrowing in domestic

money is that the debt burden does not depend on exchange rates. This contrasts with well-known episodes of balance of payments and currency crisis that hit several developing countries with large external debt stock denominated in foreign currency (dollars), such as Mexico, Brazil, Argentina and Indonesia, in the 1980s and 1990s. The Asian crisis of 1997 is a clear example of the difficulties that countries unable to sell domestic bonds abroad may incur. When investors stop funding a foreign country for any reason and start withdrawing their investments, a sudden devaluation and a dramatic rise in the foreign debt burden creates panic and economic turmoil. In so far as the dollar is accepted worldwide, the USA has therefore the privilege of becoming indebted by issuing dollar-denominated international bonds.

As for *net foreign debt*, we must remember that while the US sells dollar foreign debt, at the same time US international assets consist in securities, bonds and equity denominated in foreign currency (yen, euros, sterling), so that any devaluation of the dollar *improves* the US net foreign assets position. This asymmetry in US international portfolio composition helps explain why America has so far been able to finance its increasing trade deficit with a cumulative real depreciation of the dollar by 40% since 2001. This phenomenon is known in literature as "valuation effect" (Gourinchas and Rey, 2005) and had a substantial positive effect on the US net foreign debt position. Alessandrini and Fratianni (2009), using official BEA data, show that, in 2001-2007, dollar exchange rate depreciation increased the dollar value of US foreign assets by $950 billion. That figure helps explain why, in the same period, the increase in the US net foreign debt position was just a quarter of the cumulative current account deficit.

Another asymmetry of the international monetary system is the fact that the most important commodities, raw materials and oil are invoiced in dollars. Almost half of world trade is carried out with the dollar (Salvatore, 2000) and the USA invoices about 95% of its exports and 85% of its imports in domestic currency (Golberg and Tille, 2005; Salvatore, 2000; BCE, 2008). The privilege of being the issuer of the international medium of exchange enables the USA to exploit so-called *seignorage*: once again, insofar as the rest of the world is willing to accept the key role of the dollar, the USA can gain foreign real resources simply in exchange for domestic money. All other countries have to export something in order to obtain the foreign currency they need to pay for their imports. The limit is that an excessive creation of dollars would fuel world inflation by eroding trust in

the dollar as a valuable reserve currency. An increase in world inflation would help to ease the US foreign debt burden but at the cost of a loss of status for the US currency. Countries like China which hold most of the world dollar reserves are well aware of this problem yet are in a difficult position. Their accumulation of dollar reserves was the consequence of a deliberate political strategy to exploit the opportunity of rising domestic expenditure in the USA. The recent crisis of the US economy would seem to suggest diversification in the currency composition of international reserves. However, a relevant switch away from the dollar, toward the euro for instance, would result in rapid depreciation of the dollar, reducing the net foreign asset position of dollar holding countries. It is clear that if the need for foreign currency holdings were removed, the dilemma would be resolved and the stability of the international economy greatly enhanced.

Summing up our discussion, we can say that, up to now, the USA has been able to run big trade deficits financed with foreign debt because of asymmetry in the international monetary system that allows the country whose money acts as reserve currency to avoid normal balance of payments constraints. It is not therefore surprising that in the last decade several emerging countries found the accumulation of low return dollar reserves to be useful. The origins of the global imbalances we are talking about lie in the mutual interests of the USA, eager to finance its excess of domestic consumption over production at a low cost, and emerging countries, keen to avoid a repetition of the 1990s financial crisis through export-led growth and accumulation of dollars, the reserve currency. The cost of such a strategy, one that assured ten years of rapid worldwide growth, is now evident: excessive domestic and external debt in the American economy, and excessive reliance on the US market by developing countries. This mutual relationship is the main reason for the rapid worldwide spread of the US recession. At the time of writing it is not clear how long the crisis will last, but we think that stable recovery requires profound reform of the international monetary system to avoid a return to the pattern of recent global imbalances. The solution we propose is to create a symmetric monetary system in which none of the national currencies takes on the role played by the dollar so far. This amounts to the creation of a *supranational world money*. We shall try to outline the proposal in the remainder of the paper.

Part II – Looking for a world symmetric monetary system

5. The failure of the dollar standard

Nixon's declaration of inconvertibility of the dollar into gold marked the end of the gold-exchange standard. The 2008 global financial crisis marked the beginning of the dollar standard's agony. Historically, a system of flexible exchange rates served to accelerate the opening of the international capital market, which was impossible with the Bretton Woods rules. But after forty years of floating rates, the flaws of the dollar standard are unmistakable.

Before the collapse of the Bretton Woods system, some eminent economists promoted a system of flexible exchange rates. In 1967, in a letter to the *New York Times*, W. Fellner, M. Friedman, H. Johnson and F. Machlup declared that they were in favour "letting the market determine the dollar rates without pegging operations of any sort", because the "United States has the most widely used currency in the world. The strength of the dollar has been obscured by the administrative restrictions of recent years, but it would express itself very clearly in free, unmanipulated markets, unless we should adopt irresponsible monetary and fiscal policies for an extended period of time" (Meier, 1982: 86-7). This statement very clearly asserts the ideology of the "house in order" which is one of the pillars of the system: if every country keeps their house in order, with a low inflationary monetary policy and moderate public debt, the exchange rate market will find an equilibrium according to the purchasing power parity theory. More or less, this is also the ideology backed by leading national governments, like that of Ronald Reagan in the USA and Margaret Thatcher in the UK. And that ideology was so embedded in international thinking that when the EMU was created, as a refusal of floating rates among European currencies, nobody opposed the choice of a floating euro in the international market.

The reality of floating exchange rates is very different from the model depicted by its proponents. Forty years' experience shows that the harmonious gravitation towards an equilibrium rate of exchange never happened. The end of the Bretton Woods system was marked by worldwide inflation, in the USA, in Europe and in many other countries. The

idea that the USA could play the role of anchor for the world market was very soon abandoned. Every country tried to maintain its own inflation and exchange rates with an active policy pursued by its central bank on the international market. A system of managed rates thus replaced the ideal system of flexible rates: this means that not only the market but also national governments determined (see Triffin's point of view below) the level of exchange rates and that, of course, the stronger governments and the stronger economies had a greater chance of pushing a certain exchange rate in a desired direction.

However, government intervention in the exchange rate market was not enough to avoid some major problems, like persistent misalignment of the more important currencies (dollar, euro and yen) and dramatic financial and monetary crises. The crucial factor beyond the control of central banks and governments was the growing quantity of cross-border capital movements. According to the purchasing power parity theory, the difference in the exchange rate should be more or less proportional to the difference in the rate of inflation between two countries. In actual fact, there was much greater variability of rates of exchange than inflation. This happened "because the extensive variability in cross-border capital flows has led to much larger movement in exchange rates than would have been forecast on the basis of the contemporary difference in national inflation rates" (Aliber, 2000: 51). The outcome was a long period of misalignment of exchange rates from the theoretical equilibrium level.

Cross-border capital flows represent an opportunity to increase productivity and employment, but also a risk, if the currency of the host country is different from the key world currency. The Asian crisis of 1997 is a good example of the ambiguous effect of capital flows. Many banks in Thailand, Indonesia, Malaysia, Korea and the Philippines borrowed at low interest rates, in dollars and yen, on the international capital market and lent to local firms at higher rates. But, since the local currencies were pegged to the dollar, when the yen depreciated against the dollar, these countries had growing difficulty in exporting their production in Asia. Fearing devaluation, some foreign investors removed their capital, selling local currencies and buying dollars. At that point, devaluation of these currencies became inevitable, local banks stopped lending to local firms and the failure of a great number of banks and firms followed, with devastating consequences on the level of output and employment.

The present dollar standard is undermined by an "inbred" inconsistency. A system of flexible exchange rates should favour international capital flows and also, therefore, greater integration of the international economy. But, the international capital flows split the world into two groups of countries. On one hand we have the industrialised countries (USA, Europe and Japan), with sound financial systems, where governments and firms borrow mainly in local currency; these countries are accustomed to dealing with long periods of exchange rate misalignment that hinder trade and the efficient division of labour. On the other hand we have the emerging countries, where governments and firms are obliged to borrow in foreign currencies (mainly dollars) and where the domestic financial system is underdeveloped; these countries run the risk of sudden flights of capital. In this way, the floating monetary system has created an asymmetric international economy where, as the Stiglitz Report (2009: 17, 95) observes, an "excess supply of liquidity" exists in the USA and, simultaneously, in the emerging economies, with a current account surplus, reserve accumulation creates "a reduction in global aggregate demand".

The dollar standard's flaws are revealed by a long-term movement to escape from the floating system that started very early in Europe, where the European countries had planned the EMU since the 1970s. The European countries decided to abandon the floating monetary regime because it was incompatible with the proper functioning of the European internal market. During the same years, the emerging countries realised that in order to integrate their economy into the global market it was necessary to offer internal and external investors some guarantee of monetary and financial stability. To this end, given the weakness of their internal financial institutions, some countries pegged their currencies to the dollar, while others tried the experiment of a currency board or so-called "dollarisation". The China-USA relationship is the best example of the fact that trade, growth and financial exchanges require fixed (or nearly fixed) rates of exchange. Moreover, in every continent some experiment of regional monetary integration is under way. Efforts at regional monetary integration, following the example of the EMU, were made in Latin America, in Africa and in Asia. In Africa, the West African Economic and Monetary Union (WAEMU) unites eight countries (Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo); the Central African Economic and Monetary Community (CAEMC) unites six countries (Cameroon, Central African Republic, Chad, Congo, Gabon and Equatorial Guinea). These two monetary unions were established after the Second

World War with the political and economic support of France, therefore before the establishment of the dollar standard. Recently, both reaffirmed their will to pursue monetary union by cooperating closely with the EMU. In Asia, in response to the 1997 monetary and financial crisis, Japan proposed the creation of an Asian Monetary Fund (AMF), but the proposal was strongly opposed by the United States. Nevertheless, in 2000, at Chiang Mai in Thailand, the ASEAN+3 (China, Japan, South Korea) countries started a regional monetary cooperation process, the Chiang Mai Initiative (CMI). One of the goals is to create a reserve pool or a full-fledged AMF. The CMI is important for the coordination and integration of a region growing at a very high rate outside the dollar area (Kenen, Meade, 2008).

The movement to escape from a floating monetary regime is not the only evidence of the failure of the dollar standard. A flexible exchange rate system, in theory, should reduce the need for reserves to zero or near to zero. In Part I, it was shown that exactly the opposite happened. World reserves in fact increased progressively. In 2007, the total volume of reserves was 11.7% of world GDP, while it was 5.6% a decade earlier (Stiglitz Report: 95).

Finally, the recent financial crisis shows that the US economy cannot be considered a "house in order" and an "anchor" for the international economy. Indeed, many countries, especially the so-called BRIC, ask for substituting the dollar with a more reliable international currency. In the last decade, the integration of the emerging economies (mainly China and India) in the world market has reduced the price of a great number of manufactured goods, averting the danger of inflation in industrialised countries. A combination of low interest rates and accommodating fiscal policy has created the conditions for transforming the US into a "borrower and consumer of last resort" of the international economy. The financial crisis shows that American interests, as far as monetary and financial stability is concerned, do not coincide with the interests of all the other countries. R. McKinnon (2005: 26), in a crystal clear analysis of the problems connected with the asymmetric role of the dollar, affirms that, in order to overcome the "unfair" asymmetry, the IMF should play the role of "lender of first resort" and the United States itself that of "lender of last resort". But, the financial crisis showed that neither the IMF, nor the US government were able to play these roles. The US economy is only a fraction (albeit an important fraction) of a larger global economy. If the crisis has a

worldwide impact, the response should come from worldwide supranational institutions. The dollar standard is a partial, insufficient and incoherent reply to the problem of global governance. In the next paragraph, we shall investigate the historical and theoretical roots of this problem.

6. The Triffin dilemma half a century later

A scholar is regarded as a classic when the present generation is unable to understand current events properly without his thought. In recent decades, Keynes had been out of fashion as an economist. With the onset of the financial crisis, every government recognised the need for recovery plans to boost aggregate demand. Now, the time has come to consider Robert Triffin's analysis of the international monetary system a crucial paradigm for understanding the present international problems and for building a sound economic and political order. In effect, in the run up to the London G20, the Governor of the People's Bank of China, Zhou Xiaochuan (2009), proposed the "creation of an international currency unit, based on the Keynesian proposal" to substitute the dollar as a reserve currency with SDRs issued by the IMF. This reform is necessary, according to Zhou Xiaochuan, because the country issuing a reserve currency is "constantly confronted with the dilemma between achieving their domestic monetary policy goals and meeting other countries' demand for reserve currency … The Triffin dilemma … still exists". This statement shows that the present dollar standard regime is open to question and that Triffin's work provides the theoretical basis for the critique. Therefore, a reconstruction of Triffin's thought and its relationship with the Keynes plan for an International Clearing Union can be useful as a guideline for the impending reforms.

The historical background in which Robert Triffin examined the international monetary problem is the transition from the Middle Ages to modern times, when, for current transactions, people discarded the natural currency (gold and silver) in favour of the more convenient fiduciary money, the value of which was guaranteed by an appropriate institution, usually a central bank. This change was accomplished in many countries in the course of the 19th century and, albeit partially, at an international level, during the gold standard. At Bretton Woods, the solution agreed was a compromise: national currencies were to be convertible into gold, with the practical outcome that only the strongest

currency amid all the others could become a reserve currency. In effect, it was soon clear that the dollar was superseding the pound sterling as a reserve currency. But, according to Triffin, the new international monetary system, a gold-exchange standard, suffered from an acute internal contradiction. In *Gold and the Dollar Crisis* (1960), his pre-eminent book, he foresaw the breakdown of the fixed exchange rate system a decade in advance. The reasoning was quite straightforward. The world demand for international reserves was bound to increase at a rate greater than the growth of mined gold. Therefore, an increasing amount of US dollars had to circulate all around the world with the inevitable consequence that, at a certain time, the promise of the US government to pay 35 dollars per ounce of gold would no longer be credible. There were two alternatives to a dollar crisis: either a revaluation of gold (i.e. a devaluation of the dollar) or a system of floating exchange rates. Triffin dismissed both possibilities. On the one hand, a return to the gold standard was a historical step backward, after the experimented advantages of a fiduciary monetary system; on the other hand, a floating exchange rate system was only an illusory solution: in a world of sticky wages and prices, national governments and central banks will certainly intervene to avoid excessive fluctuations, so that an "equilibrium level" of the exchange rate will never be found. Without radical reform of the Bretton Woods institutions, there was a real danger of a repetition of the 1931 collapse of the international monetary system. According to Triffin, "the logical solution of this dilemma would lie in the 'internalisation' of the foreign exchange component of monetary reserves. The use of *national* currencies as *international* reserves constituted indeed a 'built-in de-stabiliser' in the world monetary system. The free choice of reserve holders will normally tend to concentrate on the 'safest' currencies available for this purpose, i.e. on the currencies of the major creditor countries. In accumulating such currencies as reserves, however, reserve holders are really extending 'unrequited' loans to these countries, and further increasing the natural hardness of their currencies" (Triffin, 1960: 87).

The reforms proposed by Triffin were twofold: the first directed at international level, the second at regional level. In order to substitute the national reserve currency with an international reserve, "the IMF lending capacity would be based, as in the Keynes plan, on the accumulation of bancor accounts – in the form of deposits with the IMF – by member countries as part and parcel of their total monetary reserves, alongside gold itself and fully equivalent to it in international settlements" (Triffin, 1960: 103). Moreover,

Triffin suggested that, to avoid inflationary issues of bancor reserves, a system of qualified majority vote should be agreed by the IMF Board whenever the bancor issue exceeded a certain yearly percentage. The total amount of international reserves could increase as well as decrease, according to the needs of the world economy. The second reform suggested by Triffin concerned the European Community, because the Common market project required, for its completion, the creation of a monetary union. A first step toward that goal could have been the creation of a European Clearing House or Reserve Fund, with the deposit of a minimum quantity of national reserves, in order to ease payments among member States. "A European Community Reserve Fund could become a powerful instrument to bring about the fuller integration of monetary policies that will ultimately be required by the formation of a single trading area, free of internal barriers, and by the conduct of a uniform commercial policy with respect to the external relations of the Community" (Triffin, 1960: 141).

Triffin acknowledged his intellectual debt towards Keynes. His proposals for reforming the IMF drew on the April 1943 Clearing Union White Paper. According to Triffin "the Keynes plan was bold. It was lucidly written. It was intelligent" (Triffin, 1957: 93). We can sum up the Keynes plan (Keynes, 1980) as follows. If we consider the world economy as a closed system, deposits are necessarily equal to overdrafts. Therefore, if every central bank has an account – let us say in bancor or a certain quantity of gold – in the books of the clearing union, every member of the Union can settle its debts with a bancor transfer to another central bank having a credit account. Of course, it is necessary for every member of the union to accept without limit bancor transfers, instead of gold or other national currencies. Moreover, for Keynes, the Governing Board of the Union is entitled to create new liquidity according to the needs of the world economy, as happens in a closed banking system when a bank lends an amount greater than its deposits. This is a crucial point. Keynes was concerned about the deflationary bias of the gold standard. The historical experience was that a surplus country was able to avoid the required adjustment by means of sterilization policies, while a deficit country was obliged to reduce its imports and its income. After the war, Keynes envisaged an acute problem of scarcity of international reserves for deficit countries. The possibility for the Union to issue an international currency – the bancor – represented a real alternative to the shortcomings of the gold standard.

The destiny of the Keynes' Plan is well known. At Bretton Woods, the White Plan, based on very different principles, was adopted. That outcome was inevitable considering the overwhelming power and national interests of the USA compared to those of the UK. But Keynes' proposal was not buried. Triffin understood that Keynes' fundamental idea was the key to solving a problem that the new Bretton Woods system was unable to tackle: the convertibility of the European currencies. Seizing the new atmosphere of international cooperation created by the Marshall Plan, Triffin proposed a plan to the IMF and to the Committee of European Economic Cooperation (CEEC). The goal of the plan was to create a full multilateral system of intra-European settlements in order to remove all bilateral hindrances to intra-European payments. In this way, even restrictions to trade could be eliminated. The means to build a multilateral system of payments was a clearing union, exactly as Keynes had originally proposed, but on a regional scale. In effect, Triffin was able to overcome all practical and political obstacles to that project, and in 1950, the European Payment Union (EPU) started to function. A central banker who took part in the experience affirmed that "the EPU simply put into practice Triffin's belief that regional integration was the most efficient – perhaps the only – road to full international integration based on free multilateral exchange and full convertibility. … this position was not widely accepted by economists, especially in the United States, and it was the United States, through the European Cooperation Administration, that was to be primarily responsible for the financing of the EPU" (Carli, 1982: 165). It should only be added that the EPU was a success and that, in 1958, convertibility and multilateralism were fully restored in Europe.

The practical success of Triffin's ideas did not stop at the regional level. At the end of the 1960s, when the stability of the Bretton Woods system was questioned, a debate opened on the adequacy of international reserves. The rate of growth of world reserves slowed down in 1965-1967. The addition of gold to international reserves ended. Private demand for gold increased as did its price. In 1967, at Rio de Janeiro, the IMF approved an agreement for a "facility based on special drawing rights". The way for a reform of the IMF was open. President Johnson, while signing in 1968 the US Special Drawing Rights Act, declared: "For the first time in the world's financial history, nations will be able to create international reserves by deliberate and joint decision, and in an amount needed to support sound growth in world trade and payments" (Meier, 1982: 91). This statement suggests that Keynes' bancor, as proposed again by Triffin in his *Gold and the Dollar Crisis*, was on the

brink of becoming the reserve money. It looked as if the IMF had acquired the power to create reserves that it had not received at Bretton Woods. However this is a rather hasty conclusion. The present position of the IMF is that "the floating exchange rate regime and the growth in international capital markets facilitated borrowing by creditworthy governments. Both of these developments lessened the need for SDRs. Today, the SDR has only limited use as a reserve asset, and its main function is to serve as the unit of account of the IMF" (*Factsheet* of the IMF, February 2009).

Considering this stance, it is clear that, in order to restore Keynes' and Triffin's proposal, the IMF needs radical reform. But, before discussing that problem we wish to emphasise the analytical relevance of the Triffin dilemma in the 21st century, the age of the global economy. Triffin was rather critical of the dollar standard, which he re-named "World Monetary Scandal" because, as he noted in one of his last essays, "the deficits of a reserve-centre country may be financed mostly – or even over financed – by an increase of world foreign exchange reserves" feeding in this way "a spiral of inflationary reserve increases" in which "poorer and less adequately capitalised countries" lend to richer countries (Triffin, 1991). In this short statement, written at the end of the 1980s, we can read a fairly accurate description of the present international monetary problem, including the so-called phenomenon of global imbalances analysed in the first part of this essay.

To conclude our excursus into the Triffin dilemma and thought, we should retain two lessons: the first is that a national currency cannot become an international reserve currency without causing unsustainable asymmetries; the second lesson is that regional monetary integrations, if successful, show the way for reforms of the world monetary order.

7. Two models for the new world monetary system (1): the international way

To tackle the problem of the transition from an international monetary system, which worked for almost sixty years with the US Fed as the world central bank, to a new symmetric international system, in which the control of world liquidity can be managed by several countries – in the last resort, by all the countries of the world – we need to consider two models. The first is an international monetary system, in which national central banks retain the power to issue national monies and to manage the exchange rate. The second

model concerns a supranational monetary union, with a central bank, similar to the EMU. Our aim is to explore the mainly political difficulties connected with the construction of these two models.

To begin with, let us suppose that the G20 – or the General Assembly of the UN – decides that the IMF should provide the world economy with an international reserve money, using the institutional instrument already in existence: SDRs. This decision does not imply the transformation of the IMF into a world bank. SDRs are to be used only for settlements among central banks. As in the past, national central banks issue national currency and the management of exchange rates is subject to the consent of national governments. Of course, national governments are allowed – and encouraged – to find an agreement for establishing an appropriate international monetary system, founded on fixed or managed rates. In fact, this proposal is very similar to the original Keynes and Triffin plan. Triffin affirmed, on several occasions, that he did not propose a world central bank, but only a world clearing union.

However, the present international economy is very different from the way it was in Keynes' and Triffin's time. Today, the free circulation of capital is an irreversible process. The dollar standard and the floating exchange rate regime have stimulated the opening of national frontiers and the birth of a global financial system. This process is irreversible but badly managed. The present financial crisis shows that better regulation is urgently required. One of the causes of the poor regulation is mismanagement of world liquidity. If the main task of the new international monetary system is to provide adequate and controlled liquidity to the world economy, a system of fixed exchange rates should be restored. A fixed exchange rate (for instance, in terms of a unit of SDR) limits the scope of national monetary policy. In a fixed exchange rate regime, every country should rely on a certain quantity of reserves (i.e. SDRs), provided by the IMF, and the issuing policy of the central bank must be in tune with maintenance of the agreed rate of exchange. The powerful objection to this reform is the so-called "incompatible triad": a fixed exchange rate has a very short life in an economy with free movement of capital and free national monetary policies. Now, let us assume for a moment that all the countries have reached an agreement to establish a monetary system of very large fluctuation bands, an adjustable peg or a managed peg, and let us enquire into the problems linked to the use of the SDR as reserve currency.

Since a fundamental feature of our international monetary system is that the issuing power of central banks is maintained at national level, we assume that only a certain minimum ratio of national reserves should be constituted of SDRs, provided by the IMF. Moreover, let us assume that the G20 decides that the SDRs are used as a currency for interbank settlements. At the very beginning, SDRs should compete with dollars, euros, yen and pounds sterling. Therefore, an international agreement to oblige every central bank to buy a certain quantity of SDRs (for instance a share of the sum of imports and exports) should be considered as a starting point. This undertaking does not imply that the IMF determines the volume of national liquidity. Every national economic system can decide the required reserve ratios of commercial banks and, therefore, also the total volume of credit. In the last resort, the level of the interest rate and the exchange rate can be determined at the national level. Nevertheless, the IMF, by providing SDRs – in a greater or lesser quantity – can facilitate or hinder international payments and trade.

Now, let us take into consideration the problems of SDR allocation. At present, SDRs are allocated to members of the IMF according to their quota (based broadly on the relative weight of each country in the world economy). This rule derives from the original concept of the White Plan. Every founding country had to confer a certain quota, in gold or in reserve currencies, to accumulate working capital, like a private bank. But the political function of the IMF was to guarantee an international public good: a stable and effective international monetary order. Accordingly, decisional power in the form of voting rights within the IMF closely reflected national quotas. The present situation is that the USA has 16.8 percent of votes, the European Union (EU-27) 29.2, Japan 6, India 1.9, China 3.7 and Russia 2.7 percent. But since the European Union countries vote according to their nationality (Germany has 5.9; France and UK 4.9, Italy 3.2 percent), in effect, only the USA has a veto right, because a certain proposal needs 85 percent of votes to be approved. The absurdity of allocating SDRs according to national quotas is now clear. If the IMF worked as a clearing union and SDRs functioned as an international currency, surplus countries should be paid in SDRs and deficit countries should pay in SDRs. Therefore, there should be some relationship between the volume of international trade and the circulation of SDRs. A country, regardless of its quota, can sometimes have a surplus and sometimes a deficit. To sum up, the present allocation of SDRs is a form of allocation of *seignorage* by a central bank to its shareholders.

This does not mean that SDRs cannot be useful for trade settlements among different countries. The original Agreement (1968) states that this facility "is intended to meet the need, as and when it arises, for a supplement to existing reserve assets". Nevertheless, as we have already seen, the IMF has not followed this directive. Today, the bulk of money reserve assets are in dollars or other strong currencies, like euros, yen, and pounds sterling. In 1979, to face the problem of the "dollar overhang", the IMF established a "substitution account" to facilitate the deposit of foreign exchange reserves for an equivalent amount of SDR-denominated claims. "The provisions of the Account – writes the Report of the Executive Committee – reflect the principle that its costs and benefits must be fairly shared between the depositors, on the one hand, and the United States, on the other. The Account is intended to bring about a long-term change in the compositions of reserves". Therefore, the substitution account could have represented the right step forward toward the use of the SDR as a reserve currency. But, very soon the attitude of the American administration changed. In 1980, the US government announced that it was not willing to pay higher interest rates than those on US Treasury bonds (Meier, 1982: 250).

The question of the rate of interest on SDRs deserves an explanation. The rate of interest on SDRs is equal to 80% of the weighted average of the rates of interest on short-term debt in the money markets of the SDR basket of currencies (US dollar, pound sterling, euros and yen). The interest paid on SDRs does not constitute a charge for the IMF. In effect, in a clearing union, debt and credit amounts cancel out. A country with holdings of SDRs in excess of its allocations earns net interest on excess holdings and a country with holdings below its allocation pays net charges at the same rate as on its net use of SDRs. Now, it is clear that the SDR can compete with a national Treasury bond only if it can promise a higher interest rate and better risk conditions. But the IMF does not represent a real alternative to the US economic and political system. A country prefers to accumulate reserves in dollars because it can invest its dollars at an attractive interest rate in US Treasury bonds. To conclude, in order to substitute the dollar with SDRs we need world institutions as strong, reliable and trustworthy as the US Fed and the US Treasury. In short, we need a supranational system of global governance.

To clarify that radical conclusion, let us recall the history of the European Monetary System (EMS) created in 1979 as an "area of monetary stability in Europe". The EMS can

be considered the ancestor of the EMU. It was designed as a symmetric system: every member country agreed to peg its exchange rate to the European Currency Unit (ECU), a weighted average of the European currencies, and acknowledged the obligation for its national central bank to intervene when the market exchange rate approached a "threshold of divergence", established at 75 per cent of the maximum spread fixed for each currency. Moreover, the European governments affirmed their will to create, "not later than two years after the start of the scheme" a final system which "will entail the creation of the European Monetary Fund ... as well as the use of the ECU as a reserve asset and a means of settlement". Nevertheless, the EMF, a pool of national reserves in gold and other reserve currencies, was never established and the ECU never became a reserve asset. One of the reasons for this outcome was the negative assessment of the Bundesbank. In 1989, its President, Pohl, affirmed that "mixing central bank function together with areas of government responsibility within a single Fund bars the way to a European central bank with a decision-making body that is independent of governments and is thus to be rejected" (Gros, Thygesen, 1992: 55). In other words, the Bundesbank feared that the EMF could become an instrument of political decision making, because it was under the control of ECOFIN, the Council of Finance Ministers. Since the main target of the EMS was exchange rate stability, inflationary governments could have resorted to the financial facilities of the Fund to avoid realignment. The second reason is strictly linked to the first: use of the ECU as a reserve asset could have allowed ECOFIN to create disproportionate international liquidity, leading to an inflationary process inside the system.

From the European experiment, it is worth recalling that although the EMF was never set in motion, the ECU became a kind of parallel money (Triffin 1977; Ludlow, 1982), used both by the private market and officially. From 1981 to 1985 the share of ECU issues in the international bond market reached 5 percent, and in 1989, on the eve of the EMU, it stood at 10 percent, even though the ECU was never widely used as a unit of account in the private sector. The reason for this success was that for private investors ECU bonds offered a less risky investment than putting money in a national currency (like the Italian lira). Moreover, certain governments – those of France and Italy, for example - issued ECU bonds as a political choice, i.e. as an alternative to the DM.

The EMS was designed as a symmetric system, but ended up as an asymmetric system. The reason is that the supranational institutions created were too weak compared

with national forces, notably the German economy. The final assessment of the EMS experience, proposed by Gros and Thygesen (1992: 157), is appropriate: "The EMS, as a European mechanism, was doubtless originally designed to be as symmetric as possible. The desire for symmetry conflicts, however, with the basic N-1 problem, which implies that in a fixed exchange rate regime only one country can, in the long run, determine its own monetary policy. This policy then constitutes the anchor that ties down the price level and money supply in the other countries as well. This basic proposition implies that a system like the EMS has to be asymmetric if exchange rates are really to be kept fixed". If we transpose this observation from European level to world level, it can be said that the real problem is not the exchange rate system. The dollar standard is a system of floating rates, nevertheless the US dollar became "the anchor" (despite being unstable) of the world economy. The German mark became an anchor, because the other European countries were already integrated in the European Community. For the survival of the European market and the very process of European integration, it was necessary to adopt a low inflationary economy model, the only one acceptable to all the member countries.

After the Second World War, the USA became the hegemonic power because it was able to provide crucial public goods to the Western countries, like military security, an open international market and monetary stability. When the Bretton Woods system collapsed, there was no economic and political alternative in sight. Therefore, even though the American economy was not a virtuous low inflationary model like the German one, it was still to the advantage of every Western country to accept the dollar as their international currency. After the fall of the Berlin wall, even certain Eastern countries, including Russia and China, adopted the dollar as a unit of account and as a reserve currency. Accordingly, the hegemonic role of the American economy was confirmed and strengthened. We should not be surprised if the IMF, like the EMF, never had the opportunity to become a supranational bank: the US government was not interested in dismantling the American hegemonic system. Today, an international currency, alternative to the dollar, to become a "world anchor", should be issued by world institutions at least as good and reliable as the Fed and the US Government.

8. Two models for the new world monetary system (2): the supranational way

At the beginning of the new century and after the world financial crisis, the international political environment is quickly changing. A multipolar political system, with new great powers, like China, India, Brazil, Russia and the European Union, is emerging. The US superpower cannot ignore the new reality. Moreover, this multipolar system must face new dramatic problems, like the looming ecological crisis that did not exist when the Bretton Woods institutions were created. Finding a good model of governance for the world economy is a challenge that cannot be avoided. Our task is to outline the institutional framework of a symmetric monetary system (i.e. non-hegemonic) for a multipolar world, in which every country can have a voice in the governing board. Apropos this problem, the European experience of monetary unification will be helpful, but for the world economy new original solutions should be sought. Our hope is to show that a world monetary union is technically feasible and politically desirable.

To begin with, we need a new approach compared to the White Plan philosophy: the IMF was designed as a private bank, financed by the shareholders, but managed by US governments and their allies. Today, we can think of the world monetary order as a global public good provided by common institutions: at the centre, there is the world central bank (which could be a reformed IMF, or the Bank for International Settlements, or a new institution). This project can take stock of European experience. The ECB was designed on the model of the Bundesbank when all the European countries accepted, as a common monetary policy, the fundamental target of "price stability" and, as a complementary target, also certain limits to their public deficits and their indebtedness, as a percentage of GNP. The first target was achieved, in Maastricht, with the creation of the ECB that is independent of instructions from national governments and European Authorities. The second target was achieved with the Growth and Stability Pact (GSP) that imposes budgetary discipline on member States. In terms of reform of the international institutions, we propose that the governing board of the world central bank (WCB) should be designed following the European model or the European Federal System. This requires radical changes to the IMF voting system to allow the IMF to function as a public institution. As far as fiscal regulations are concerned, we propose to depart from the European model.

The proposal of a world monetary union (WMU) is a very bold step. We are aware of the political hurdles we need to overcome. Therefore, it is necessary to clarify the political pact that national governments should agree to. A world monetary union is a project that establishes a stable and fair international monetary system. If it is not fair, governments will reject it; in order to be fair, the system should also include a commitment to create common policies to face the major global challenges, like world poverty and the environmental crisis. In the modern state, monetary policy and fiscal policy are the two fundamental pillars of economic policy. Money is a public good complementary to other public goods, like policies for lowering regional imbalances and social inequalities, cleaning the environment, etc. Hence, a project for a monetary union cannot omit some form of fiscal provision (Montani, 2002). Moreover, the new world monetary system should be designed as a work in progress, because there is no world Leviathan to ensure that it is built at a given time by all countries. Gradually, all the people of the world should understand that it is in their interest – their real national interest – to give up an empty symbol of national sovereignty in exchange for real power: participation in government of the world economy. This process of understanding requires time. The establishment of the world monetary system should be achieved step by step, with a core group of countries starting a union open to all other countries of the world.

First of all, let us consider the establishment of the WCB. The transformation of the IMF into a world central bank can be achieved by obliging national central banks (NCB) to open a special account in SDRs at the WCB, in which to deposit a certain percentage of their monetary base. Indeed, a similar proposal was envisaged for the creation of the ECB (Gros, Thygesen, 1992: 378-9). Just as the national commercial banks are compelled to maintain a certain percentage of their deposits in a special reserve account at national central banks, so every NCB will do the same at the WCB. In this way, a three-tier system of reserve requirements will be created. The WCB, by controlling the reserve requirement at the world level, can control indirectly the world monetary base. This reform does not entail the substitution of national monies with common world money. Dollars, euros, yen, rupees, renmimbi, real, etc. can circulate as in the past. What is essential, for monetary union, is a single centre responsible for controlling the overall monetary base. The advantage of preserving national currencies in circulation is that the commodity markets, for instance the oil market, can continue to issue invoices in the traditional currency, in this

case dollars. Moreover, a crucial advantage of a centralised WCB is that it will ease the regulation and monitoring of global finance. To avoid a new world financial crisis, an effective world regulatory power is necessary: NCBs and national regulatory powers cannot govern global finance.

Every national central bank will also have the power to determine the short-term interest. We can imagine a WCB which has the power to fix a central rate of interest on SDR deposits, but allows each NCB to fix its own national rate of interest. Of course, the two rates cannot be completely independent. The long run trend will be towards a uniform interest rate in the whole Monetary Union. But we envisage a degree of national freedom in the beginning.

In addition to control of the world monetary base, the WCB will also gain control of the exchange rate. In Europe, exchange rates were permanently fixed on December 31st 1998, and from January 1st 1999 the ECB merely had to decide the appropriate level of liquidity for entire EMU. At world level, we can envisage a different path. Growth and inflation rates for each country are so different that the sudden imposition of a uniform monetary policy will raise insoluble problems. The best way to act is to create concentric circle of countries with different inflation propensity. For instance, a group of countries, with a similar propensity to monetary stability – let us imagine the EU, the US, Japan and the UK – adopts a 0-3 percent inflation range. Among this group of countries – with an important share of world trade and finance, so that they can be considered an embryo of the WMU – the exchange rated is fixed in terms of a unit of SDR. Now, it may happen that the EMU is able to achieve, for several years, an average inflation rate of 2 percent, while the US endures an inflation rate of 3 percent. If financial operators think that a devaluation of the dollar is likely to happen, they will start selling dollars against euros. The WCB has two alternatives. The first is to accept that the time is ripe for dollar devaluation and to establish a new parity. The second is to provide the necessary quantity of SDRs to the US Federal Reserve System, which can buy euros and sell euros against dollars on the market until the speculative attack ceases. Of course, this policy implies that the monetary base of the USA will be reduced (if the US Fed pays for the SDRs received by the WCB in dollars). However, the point in discussion here is that the WCB has the power to control the exchange rate market and to avoid speculative attacks. Therefore, the WCB is not only the lender of last resort; it is also the stabiliser of last resort of the exchange rate market.

The establishment of the WCB allows member countries of the Union to fix crossed exchange rates without fearing the "incompatible triad" effect.

The previous example of a small group of industrialised countries forming a monetary union is useful to show that the stability of the world financial market can be assured even if not all the countries of the world belong to the WMU from the start. But of course, the importance of a WMU is to put together industrialised and emerging countries. For instance, all the NAFTA countries (USA, Canada and Mexico) should become members of the founding group. What is really important is that the WMU is so designed that the doors are open to other countries. From that perspective, a second group of countries aiming at an inflation range of 0-5 percent could be formed. A third group may prefer a range of 0-10 percent. The WCB should therefore differentiate its monetary policy for every group of countries. This type of monetary policy is complicated but not impossible. The quantity of SDRs distributed to every NCB should be decided as if every group of countries had its own central bank. In any case, it should be clear that the power to intervene on the exchange market belongs to the WCB and not to the NCBs. Only on that basis would the NCBs have no need to accumulate foreign reserves.

A world market divided among countries accepting very different inflation ranges is imperfect and instable, because some revaluation or devaluation would be bound to happen from time to time. A WMU should aim, in the very long run (measured in decades, not in years), to favour a process of convergence, from the higher level of inflation ranges to the lower one. That means that, at a certain point, the emerging countries should become able to compete in a common world market with the industrialised countries. A parallel process should be envisaged inside the WTO as far as trade rules are concerned.

Now, we have to discuss how a monetary union can be fair; in other words, the relationship between fiscal policies and monetary policies. The convergence process cannot be entrusted only to market forces. The creation of SDRs was followed by debate on their use for international policies (Triffin, 1971). This debate showed that the creation of an international reserve currency could be exploited to finance national policies, if SDRs were allocated according the member's quota in the IMF, or international policies, if they were allocated to an international institution, like the UN. The history of monetary integration in Europe can be useful to clarify this issue. Agreement on the ECB was achieved only when every European country accepted a central bank independent from political powers. The

Maastricht Treaty states that: "… neither the ECB nor a NCB, nor any member of the decision-making bodies shall seek or take instruction from Community institutions or bodies, from any Government of a Member State or from any other body" (art. 107). The independence of the central bank from political powers should be considered as an essential feature also for the WCB. Monetary policy is a very important part of a material constitution of a country. A country can entrust its monetary policy to a supranational body only if it is certain that it will follow a previously agreed line and not the will of some other national government. A symmetric monetary union is a supranational pact among countries accepting a common policy target, for instance a yearly inflation rate no higher than 3 per cent.

In Europe, the relation between monetary and fiscal policy is poorly defined: the EU has an ECB, but not an integrated fiscal system. The EU has a Community budget of 1 percent of GDP and a Stability and Growth Pact (SGP) restraining national indebtedness. At present, the Community budget is not considered big enough for effective fiscal policy at the European level, since it represents only 2 percent of total European expenses. The meaning of the GSP was well explained by the President of the ECB, Trichet, on the occasion of the financial crisis: "the Stability and Growth Pact – he said – is the legal framework we have as a *quid pro quo* for the fact that we do not have a federal budget and a federal government" (Trichet, 2008). Accordingly, the European member countries are obliged to provide common public goods, like the financial crisis recovery plan, by coordinating their national plans. But, since coordination usually fails, Europe does not have an effective budgetary policy.

For the WMU, it is preferable not to follow the European example of a common fiscal policy based mainly on national budgets. A GSP at world level is not desirable and is not necessary. Every country belonging to the WMU will have to accept a certain inflation target. If the WCB pursues an appropriate monetary policy, every country will receive the quantity of money necessary to finance its growth without exceeding the agreed inflation rate. But, if a national government decides to issue an excessive quantity of Treasury bonds to finance its budget, leading to a national inflationary process, the lenders of the global financial market will demand higher interest rates. And that's that. The risk of sovereign default exists today and will exist tomorrow. The WMU can, in the last resort, impose sanctions against a misbehaving country. What really matters, for a WMU, is the existence

of a world budget to finance some crucial global public good. Today, the UN does not have a system of own resources. All the policies and missions it accomplishes are financed through national budgets. To stimulate a worldwide convergence process, a common budget is necessary. It is worth recalling that with a Community budget of 1% of the GDP the EU was able to ensure an effective convergence process among its members, and some important European policies: the regional policies, the common agricultural policy, space exploration and the fight against climate change. If, at world level, the UN could rely on a budget of a similar size, a more united and integrated world could certainly be built. Not only do we need a WMU, but a World Eco-Monetary Union (WEMU), where "eco" means "eco-logical and eco-nomic", two strictly interdependent aspects of human life in the 21st century.

9. Together, out of the crisis

The world recovery will be weak, fragile and uncertain if the firms and operators of the global economy fail to perceive that world institutions will be reformed in such a way as to avoid a second financial crisis. A global economy without global governance is like a ship without a course. Efforts to create a worldwide system of financial regulations will be vain if the agents of the global economy perceive that one of the pillars, international money, is no longer an "anchor". The old monetary order is slipping. The countries willing to lead the world economy should be brave enough to take a step forward towards a WEMU. A step, even a modest step, but in the right direction, may be enough to transmit confidence and positive expectations to market forces. The WEMU is a long run project. It will take decades to build and to work properly. But some partial reforms are enough to start with.

There are two very urgent problems to be solved. The first is to ensure that the present international currency, the dollar, will not be devalued, i.e., that the US government and the Fed will not provoke an inflationary process. If this happens, creditor countries will be badly damaged and world trade will turn upside down. The second problem is to stop the "built-in destabiliser" analysed by Robert Triffin: the USA prints dollars and imports goods paying in dollars; the exporting countries accumulate dollars as international reserves; to get a positive interest rate, they reinvest their dollars in US Treasury bonds. This asymmetric advantage of the USA must stop, even in the interest of the USA.

The first problem can be solved if the main economic powers acknowledge that the doctrine of putting the national house-in order does not work in a global market when the world house is not in order. Let us consider the European Union. In both the Maastricht Treaty and the GSP, meticulous rules were established to secure a stable monetary and financial order in the EMU. But practically nothing was said about the international economic order: the euro was left to float freely in an anarchical global economy. Now, the outcome is that the financial crisis has severely hit the European economy, scuttling the pact: every national government is obliged to issue a huge quantity of national bonds, violating the GSP rules and thus initiating an inflationary process in the EMU, despite the ECB's independence and virtuous monetary policy. Since region-wide rules are insufficient, it is time to look for worldwide rules. A first step is Taylor's (2008: 18) proposal for a "global inflation target". The aim is to base national government economic policy on a common diagnosis of the state of the world economy and on a common rationale for intervention. A global inflation target, according to Taylor, "would help prevent rapid cuts in interest rates in one country if they perversely affect decisions in other countries. Policy makers could then discuss global goals for inflation and the impact that one central bank might have on global inflation". This proposal does not entail reform of international institutions. It is an acknowledgement that the interdependence of the global economy compels central banks to cooperate with one another to insure good governance of the world economy. A similar form of cooperation among central banks was considered one of the "rules of the game" of the old gold standard. A more demanding step is Richard Cooper's "Proposal for a Common Currency among Rich Democracies". According to Cooper a single monetary policy among USA, EU and Japan, could be assigned to a common Board of Governors. "One of the advantages of a common currency in the core of the world economy – Cooper says – is that countries could confidently frame their exchange rate policies with respect to this common currency – either fixing it, if that seem best, or maintaining a managed float against it. It would provide monetary stability for the world economy" (Cooper, 2006: 392). Such a project should obviously be open to other countries willing to join the leading group. A world monetary union should be conceived as a centre of gravity. If it is sufficiently strong and well managed, step-by-step all the other countries of the world will recognise that their real interest is to join it.

The second problem concerns the gradual substitution of dollar reserves with an international reserve currency, as Triffin originally proposed. We can follow the lines suggested for the "substitution account", but giving the IMF the possibility of offering a real alternative to US Treasury bonds for creditor countries. This can be done if the IMF functions as a world central bank which buys Treasury bonds issued by a UN Treasury and, afterwards, it sells the UN bonds to the national banks eager to substitute their US bonds with similar financial assets.

Of course, this proposal entails a first reform of the UN, which should be endowed with a budget and its own financial resources. The Stiglitz Report (2009: 74) proposes the creation of a Global Economic Coordination Council (GECC) with the mandate "to assess developments and provide leadership in economic issues while taking into account social and ecological factors". GECC representation "could be based on a constituency system designed to ensure that all continents and all major economies are represented". The GECC should have the power to decide how to use the financial resources of the UN budget. The UN budget should be financed, in part, by aggregating the present plethora of world funds created for a great number of emergencies –famine, health, disease, poverty, environment, etc. – that are badly managed due to their overlapping functions and lack of coordination and, in part, by national contributions (for instance 0.5% of GDP of every country).

Moreover, the GECC can authorise the IMF to raise new funds by issuing UN bonds, which can be bought only by national central bank. The UN bonds should be denominated in SDRs, reformed in order to include all the national monies of the countries willing to take part in the WEMU project. The new SDRs can be redenominated World Currency Units (WCUs). The interest rate on UN bonds should be established in relation to rates of interest of national bonds, in order to avoid speculation by NCBs. The main purpose of UN bonds is to stabilize the value of reserves held by NCBs, at the same time as ensuring a fair rate of interest. In such a way, it will become possible not only to gradually substitute the dollar reserves of creditor countries with an international currency but also to create financial resources for truly global economic governance.

This reform will allow NCBs to diversify their reserves, but it is not the radical solution necessary to ensure a sound world monetary system. Even with UN bonds available, some NCBs will find it more profitable to maintain reserves in dollars, euros or

in some other strong currency. The world monetary system will continue to be based on the dollar, on floating rates and an ever-weaker debtor country of last resort. Even the Stiglitz Report (2009) does not overcome the limits of our "international model", because it proposes "a global reserve system". The real solution is to eliminate the need for every country to accumulate reserves, building a world central bank that issues WCUs.

We are well aware of the political difficulties raised by these proposals. Is a radical reform of the UN necessary to build a WEMU? Probably it is. But our enquiry stops at that point. Our aim was only to explore and clarify the relationship between economic and political aspects of the new world monetary order. All this is not a dream: the problem was raised, even if indirectly, by the London G20 governments as a reaction to the financial crisis. Surely, many economists and politicians will consider our proposal utopian. The best way to reply to these critics is to remember that Keynes faced the same critiques when he proposed his plan for an International Currency Union. "It is complicated and novel and perhaps Utopian – Keynes said – in the sense, not that is impracticable, but that it assumes a higher degree of understanding, of the spirit of bold innovation, and of international co-operation and trust than it is safe or reasonable to assume" (Keynes, 1980: 33). Today, we hope that it is reasonable to assume that that spirit is alive.

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II There is a growing literature on the issue of the reform of the international monetary system and the introduction of some form of international or supranational money along the lines described in this paper. See among others, Alessandrini and Fratianni (2009a, 2009b), Constabile (2009), D'Arista (2009), Kregel (2009), Piffaretti (2009), Ussher (2009).

III Remember that the change of foreign asset stock ΔB is equal to *minus* the financial account balance *CF*, namely $\Delta B = -CF$. Since the sum of current account *CA* and financial account is zero, it follows that a negative current account implies $-CA = CF = -\Delta B$.

IV See for example Bernanke (2005), the NBER debate in Clarida (2005), Dooley et al (2003, 2009), Edwards (2005, 2007), Feldstein (2008), Obstfeld (2005). A very good review of the above issues may also be found in Wolf (2008).

V Remember that, in the 1990s, under the Clinton presidency the Federal Budget was in surplus.

VI 2009 data is taken from IMF estimates.

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The ASEAN Charter: An analysis*

by Elena Asciutti

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Abstract

In 1967, Indonesia, Malaysia, Philippines, Singapore and Thailand founded the Association of Southeast Asian Nations (ASEAN). In the early 1990's, five more states became members of ASEAN: Brunei, Cambodia, Laos, Myanmar and Vietnam. Southeast regionalism has indeed been the most difficult to summarise and conceptualise, because it has shaped up in an original way with respect to regional theories, showing a preference for *de facto* regionalisation rather than for *de jure* cooperation. Henceforth, the Association has been known for the highly informal 'ASEAN Way' of diplomacy. In November 2007, the Heads of State and Government of the member states signed the ASEAN Charter, which entered into force on 14 December 2008. By introducing a Charter, the Association has been given a more formal framework.

The original version of this article did not properly acknowledged the work of Prof. Daniel Seah "The ASEAN Charter", published in Volume 58 (Issue 1, January 2009) of the *International and Comparative Law Quarterly* . I would like to unreservedly apologise to him and the journal *Perspectives on Federalism* for this occurrence.

Key-words:

ASEAN, Charter, Southeast Asia, Regionalism, ASEAN Way

1. Introduction

Regional integration is a multidimensional phenomenon, which can take different forms. It can be functional cooperation in some fields of inter-state relations. It can also take a broader form when participating States try to incorporate convergence of their policies in different sectors under a single framework. Regional integration is thus a process of deepening cooperation over areas that parties agree on as common interests shared by each one. In essence this involves a process of economic liberalisation among countries. This process is heavily dependent upon the political will and commitment of the governments concerned, and a sustained desire to co-operate over the long term.

The region has been defined in many ways and for various purposes. Regions have been seen as 'imagined communities' produced by region-building elites (Neumann, 1994: 53-74). The region is prominent among contemporary reconfigurations of international space, that have been termed multiple 'transnational spatialisations' (Rose, 1999) For some, regions are ethnic and cultural units, for others, economic ones or geographical ones, and for yet others, they are simply political subdivisions of the nation-state.

Hettne suggests that a number of qualities are needed for a region to be an effective player and meaningful entity (Hettne, 1999: 7-11). He proposes the idea that five degrees of 'regionness' can be deduced. First of all, the region as a geographical unit, delimited by more or less natural physical barriers and marked by ecological characteristics. Secondly, the region as a social system, which implies trans-local relations of varying nature between human groups. Thirdly, the region as an organised cooperation in any of the cultural economic, political and military fields. Fourthly, the region as a civil society, which takes shape when the organisational framework promotes social communication and convergence of values throughout the region. Finally, the region as an acting subject with a distinct identity, player capability, legitimacy and decision making structure.

The region can play the role of a discursive vehicle for cooperation, not uniquely or necessarily associated with a specific institution or set of rule-based arrangements. The impact of the perception of the region itself and of the very notion of neighbourhood are thus located at the centre of regional dynamics, to the extent that the region may provide an arena for influence and even for the development of 'a widely shared normative

framework' (Alagappa 2003: 572). In this way, a region becomes a terrain underpinned by the role of rules and identity[I] able to engender a 'more collective than particularistic' sense of community. This includes regional contextualisation of international rules which allows for non-binding collaboration among strategic peers.

In the case of the Southeast Asian region, it has not been easy to identify a regional identity, as the countries in the region are diverse: three major world religions — Islam, Christianity and Buddhism — are found in the Southeast countries; major and minor languages as well as various races are present; countries are at different stages of economic development; even political ideologies are not always in conformity. Extreme diversity is the major characteristic of the region and to promote a regional identity has meant to promote 'unity in diversity'. This has guaranteed regional integration and prevented regional disintegration.

The related political result has been the development of institutional form and content, leading to high levels of cooperation with low levels of formality and intrusiveness, under the Association of Southeast Asian Nations (hereinafter ASEAN). It is an intergovernmental organisation, where the policymakers are indeed the heads of states and governments of the member states. The ten members of ASEAN are equal, all contributing the same ASEAN dues and all having an equal voice in decisions. However, ASEAN displays complexities in behaviour that are the product of the contingent interaction between the material (power, territory, wealth) and the ideational (rules, ideas, identity) aspects, as member states actively seek to manage domestic order as well as regional order within and beyond ASEAN. The *de facto* regionalisation rather than *de jure* cooperation and the highly informal diplomatic relations within the Association have been the major characteristics of regionalism in Southeast Asia, often known as the 'ASEAN Way'.

The rise of China and India, the recovery of Japan, the challenges of enhanced trade liberalisation have pushed ASEAN to make itself more cohesive and integrated, consolidating the Association's legal basis through the adoption of a charter. The idea of an ASEAN Charter was proposed by Malaysia in 2004, and the decision to draw up a Charter was formally adopted later at the 11th ASEAN Summit in 2005. The Malaysian concept paper 'Review of ASEAN Institutional Framework: Proposals for Change' had argued that in order to successfully transform ASEAN into an ASEAN Community, it would have to be prepared for profound changes which would also affect its institutional framework. One

of the suggestions, therefore, was to review and revise ASEAN's current institutional framework, working methods, and rules — hence the need to draft a Charter. In 2005, ASEAN invited a ten-person Eminent Persons Group (EPG) with a representative from each of the ASEAN states with a representative to advise on the policies and institutions to be taken into account in the reorganisation of its socio-political regional architecture. In 2006, during the Cebu Summit, EPG presented a document know as the 'Blueprint for an ASEAN Charter'. EPG's idea was to provide ASEAN with a constitutional document, containing rules, statements on sovereignty, rights and obligations, powers in legislative, executive and judicial processes, in order to foster the ASEAN integration process. While the 'ASEAN Way' was not going to be completely discarded, the intent was to supplement the ASEAN way with a culture of adherence to rules which were going to be legally binding by the merits of the Charter.

Between the ASEAN Summits in January and November 2007, a High Level Task Force (HLTF) was assigned to prepare the draft of the Charter, which was to be approved by the leaders in time for ASEAN's 40th anniversary celebrations in Singapore. The members of the HLTF were apparently told by the ASEAN Senior Officials that the draft Charter must be 'practical and doable'. As a result, the ASEAN Charter was drafted in a way that the Association would have maintained its own brand of regionalism, involving loose cooperation among the States concerned on the basis of consensus and dialogue: the 'ASEAN Way'. Finally, in November 2007, while celebrating the 40th anniversary of ASEAN, the Association's members signed the ASEAN Charter and later ratified the Charter[II], which entered into force on 14 December 2008.

The paper is divided into two main parts. The first one deals with the analysis of the characteristics which have shaped the regionalism of ASEAN since its creation. The second part analyses the features of the new ASEAN Charter. The paper emphasises how the ASEAN discourse proposes an alternative way - in relation to the Western liberal approach to global governance – where States' behaviour changes namely through socialisation inside an international institution.

In doing this, the paper considers the concept of regionalism in a twofold manner: first, as a *natural progress of regional convergence*, through which the economic, political and social interactions among States with specific features of geographical proximity are bound to bring about the effect of regional identity and of regional community; second, as a *driving*

force of regional coherence, through which certain regional mechanisms are seen to further stimulate regional cooperation among regional countries, promoting a common interest in the region, as well as guiding the regional order.

2. The ASEAN Way

The Association of Southeast Asian Nations challenges the 'hegemony' of two ways of International Relations, according to which the involvement in international institutions changes State behaviour in more cooperative directions. The first way occurs when, in pursuit of a constant set of interests or preferences, a State responds to positive and negative sanctions provided exogenously by an international institution or by certain players within the institution. The second way is through changes in the domestic distribution of power among social groups pursuing a constant set of interests or preferences.

ASEAN discourses on the other hand stresses the fact that the social milieu is created inside formally weak institutions, as the effect of familiarity, consensus building, consultation, non-coercive argumentation, the avoidance of legalistic solutions to distribution problems. Over the last forty years, ASEAN has developed a particular set of goals and rules with regard to the conduct of regional and international relations. Southeast Asian countries undertake most of the crucial interactions at regional level within the scope of ASEAN.

At the end of 90's, ASEAN discourses was highly criticised and its credibility was dented, as the Association was unable to face several regional challenges. First of all, ASEAN was criticised for being unable to effectively address the Asian financial recession of 1997-98. A second concern regarded the Indonesian forest fires of 1997-98 that blanked the region with pollution, and ASEAN was judged ineffective in the face of the environmental crisis. The third criticism was linked to the inability of ASEAN and its members to take a firm and united stand in dealing with the humanitarian and security crisis in East Timor that arose after the vote for independence from Indonesia. Then, in 1999, the expansion of ASEAN represented the fourth concern. As the new members were Cambodia, Laos, Myanmar and Vietnam, this concern regarded the implications of expansion for solidarity, cohesion and effectiveness of the Association.

Nevertheless, ASEAN has not been inactive. The Association has served the region well in contributing to peaceful relations with other Asian countries. In particular, ASEAN has been successful in reducing intra-mural conflict within its own member States and also in facilitating regional stability within East Asia, especially when major powers have jockeyed for influence in Southeast Asia. Over the years, cooperation between ASEAN's members has strengthened and their ideas about how to conduct regional and international relations have merged in a coherent *modus operandi*, known as the 'ASEAN way'. The latter has enabled the Association to act in a reasonably cohesive manner by serving as a platform to accommodate the interests in a reliable, relevant and fair way.

The ASEAN Way incarnates five sets of principles which were institutionalised by the Association during its development.

The first set of principles emphasises the importance of *neutrality*. Neutrality has characterised the Association's attempt to keep itself shielded from tensions and conflicts that preoccupy the world powers. Eventually, this objective led ASEAN members to sign the Southeast Asian Nuclear Weapons-Free Zone Treaty in December 1995.

For members of ASEAN, *sovereignty* and sovereign equality, from which legal rules such as non-intervention flow from, continue to represent the 'basic constitutional doctrine' of international law. This is the deeper basis of consensus, compromise and consultation in decision-making by ASEAN's members. This principle was embodied by the Treaty of Amity and Cooperation (TAC), which regulates relations between those who adhered to the TAC and ASEAN neighbours.

Thirdly, ASEAN member states have preferred *consensus* and non-binding plans to treaties and legalistic rules, managing affairs with a minimum of formality, and with relatively weak regional institutions. In terms of order, emphasis has been placed on social trust rather than on the rule of law as the basis for negotiation, whereby wide consultation and compromise have been preferred to confrontational deliberations. Hence, implementation of deliberation has relied on national institutions and actions, rather than creating a strong central bureaucracy and a mechanism for calling member states to account in the event of non-compliance with binding agreements.

The fourth set of principles emphasises the *peaceful settlement of disputes* in conducting international relations, while supporting the respect of international justice and international obligations and abstaining from exerting pressure on other countries.

Finally, ASEAN members have mainly promoted *stability* and *social harmony* within their borders, in order to reduce domestic insecurity and regional friction and face problems related to the impact of global economic forces.

These sets of principles have reassured ASEAN members that their national sovereignty would not be threatened by their neighbours, while building confidence among themselves. Member States have gained the confidence that decisions would not be imposed on them by the combination of pressure from neighbours or through strong supranational institutions. In short, the 'ASEAN Way' has enabled ASEAN to keep peace among members, promote regional stability and play a constructive role in international relations, managing, containing, and settling disputes by legal or diplomatic means, certainly in non-violent ways.

Over the years, through established and institutionalised cooperation, member states have also managed to develop collective rules of *peaceful interstate behaviour*. It is useful to divide these rules into three different categories.

The first category of rules is related to *inter-state relations* among ASEAN members:

- Respect for 'justice and the rule of law in the relationship among countries of the region' (ASEAN Declaration, 8 August 1967);
- Exclusive reliance on 'peaceful processes in the settlement of intra-regional differences' (Declaration of ASEAN Concord, 24 February 1976, and subsequent documents);
- Mutual assistance in the event of natural disasters and 'other major calamities' (Declaration of ASEAN Concord, 24 February 1976);
- The development of an 'awareness of regional identity' (Declaration of ASEAN Concord, 24 February 1976) and the promotion of 'a common regional identity' (Declaration of ASEAN Concord II, 7 October 2003);
- The 'fundamental principles' of the Treaty of Amity and Cooperation in Southeast Asia, 24 February 1976: mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; the right of every state to lead its national existence free from external interference, subversion or coercion, non-interference in the internal affairs of one another, settlement of differences or disputes by peaceful means, renunciation of the threat or use of force, effective cooperation among themselves;
- The undertakings in the Treaty on the Southeast Asia Nuclear Weapon-Free Zone, 15 December 1995;

- Freedom from 'all other weapons of mass destruction' (ASEAN Vision 2020, 15 December 1997);
- The 'principle of comprehensive security' (Declaration of ASEAN Concord II, 7 October 2003).

The second category of rules shared by ASEAN member states concerns *relations with states outside the region*:

- Adherence to 'the principles of the United Nations Charter' (ASEAN Declaration, 8 August 1967);
- 'Close and beneficial cooperation with existing international and regional organisations with similar aims and purposes' (ASEAN Declaration, 8 August 1967);
- The 'recognition of, and respect for, South East Asia as a Zone of Peace, Freedom and Neutrality, free from any form or manner of interference by outside Powers' (Zone of Peace, Freedom and Neutrality Declaration, 27 November 1971);
- 'A strong ASEAN community, respected by all and respecting all nations on the basis of mutually advantageous relationships, and in accordance with the principles of self-determination, sovereign equality and non-interference in the internal affairs of nations' (Declaration of ASEAN Concord, 24 February 1976); - Accession by non-regional states to the Treaty of Amity and Cooperation in Southeast Asia, 24 February 1976;
- 'ASEAN as an effective force for peace, justice and moderation in the Asia-Pacific and in the world' (ASEAN Vision 2020, 15 December 1997);
- The ASEAN Regional Forum as 'the main forum for regional security dialogue' (Declaration of ASEAN Concord II, 7 October 2003).

The third category of common principles consists of the *standards of behaviour within ASEAN States*:

- The 'promotion of social justice' and 'the improvement of the living standards of their peoples' (Declaration of ASEAN Concord, 24 February 1976);
- 'A Community of Caring Societies' (ASEAN Vision 2020, 15 December 1997), where 'all people enjoy equitable access to opportunities for total human development regardless of gender, race, religion, language, or social and cultural background, where strong families as the basic units of society tend to their members particularly children, youth, women and elderly, and where the civil society is empowered and gives special attention to the disadvantaged, disabled and marginalised and where social justice and the rule of law reign';

- The peaceful resolution of domestic political disputes[III] (ASEAN Joint Statement on the Situation in the Philippines, 23 February 1986);
- 'National reconciliation and dialogue among all parties concerned leading to a peaceful transition to democracy' (Joint Communiqué of the 36th ASEAN Ministerial Meeting, 17 June 2003, paragraph on Myanmar);
- 'Free and peaceful elections' as contributing to 'the attainment of a just, democratic and harmonious Southeast Asia' (Joint Communiqué of the 37th ASEAN Ministerial Meeting, 30 June 2004, commenting on elections in Malaysia, Indonesia and the Philippines).

Some rules of interstate behaviour have evolved over the years, and two developments stand out. The first is the convening of regular and frequent meetings to review progress, which have gone beyond the exchange of formalities and become an opportunity for a more open and frank discussion of common problems. For example, economic purposes have been pursued through closer cooperation and moves towards regional economic integration. Relationships formed and cooperative practices developed have helped ASEAN countries to deal with common regional problems like transnational crime and unprecedented non-traditional security challenges, such as trans-boundary pollution and transmissible diseases. The second development is that ASEAN has increasingly opened its proceedings to other institutions, developing links with other international organisations, non-governmental organisations, corporate groups, professional associations, and cultural and educational institutions across the region.

3. The ASEAN Charter

The ASEAN Charter was adopted by ASEAN leaders on 20 November 2007. A media release from the ASEAN Secretariat noted that 'for the first time after 40 years of the regional organisation, ASEAN member states have codified organic Southeast Asian diplomacy, and listed key principles and purposes of ASEAN'.[IV] With 13 Chapters, 55 Articles, and 4 annexes, the new Charter has essentially laid out the legal and institutional framework of ASEAN.

The former ASEAN Secretary-General, Mr Ong Keng Yong, once declared that 'the Charter will serve the organisation well in three interrelated ways: (1) formally accord ASEAN legal personality, (2) establish greater institutional accountability and compliance

system, and (3) reinforce the perception of ASEAN as a serious regional player in the future of the Asia-Pacific region'.[V]

By concluding the ASEAN Charter - a legally binding agreement - ASEAN's leaders have indeed signalled their commitment to a catalogue of legal obligations and rights.

It is possible to explain the reasons behind the ASEAN member states' commitment to the Charter through four arguments, namely functional cooperation, regional identity, geopolitical weight and internal governance. According to the first argument, the deepening of regional cooperation is functional to the capacities of states to manage an increasingly interdependent regional economy and the related political forces. The second argument sees the ASEAN member states' commitment as a reflection and amplifier of an original regional identity or consciousness. If the latter is backed by the Asian values discourse, ASEAN identity could take the form of the common ASEAN aspirations, distinctive norms and political and economic system in the face of outside pressures. The geopolitical argument interprets States' commitment on the Charter as a collective call to action for a stronger ASEAN, able to establish relations with third parties on an equal footing. Finally, a common framework for incorporating ASEAN decisions at national level, if accomplished, will be a significant step towards legalising and deepening the cooperation of ASEAN member states and the Association's internal governance.

While the adoption of a Charter is certainly a watershed in ASEAN's history, many observers have questioned how much has actually been achieved with the formal adoption of the Charter. In this sense, the ASEAN Charter can be labelled as a 'rule guardian' (Stubb 2008: 451-468), in the sense that it protects the rules and goals that ASEAN took on board a long time ago.

The Charter has been carefully drafted to preserve the sovereignty of each member state as the ultimate source of authority that enacts and enforces laws within their territorially defined units (Seah 2009: 202). Besides, the Charter constitutes the tool to resolve the tension between the need for a greater commitment to make ASEAN effective and the member states' lack of willingness or ability to delegate authority and give ASEAN more discretion. At the same time, the Charter can also be seen as a means to strengthen these issues to avoid marginalisation in the region and the world.

The analysis continues with the examination of the ASEAN Charter's key provisions, which might be the vehicle for responding to new global concerns, as well as strengthening intra-regional collaboration.

Principles and Objectives

The Charter defines the purposes and principles of the Association with regard to political-security affairs, economic integration and socio-cultural matters (Article 1 and Article 2).

The stability and the consistency of these principles have allowed member states to agree upon the ASEAN Charter. ASEAN and its member states shall act in accordance with the following principles (Article 2):

(a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;

(b) shared commitment and collective responsibility in enhancing regional peace, security and prosperity;

(c) renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;

(d) reliance on peaceful settlement of disputes;

(e) non-interference in the internal affairs of ASEAN Member States;

(f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;

(g) enhanced consultations on matters seriously affecting the common interest of ASEAN;

(h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;

(i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

(j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;

(k) abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN state or any non-state player,

which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States;

(l) respect for the different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity;

(m) centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory; and

(n) adherence to multilateral trade rules and ASEAN's rule-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.

Essential to any charter or constitutive act of an association is the statement of its objectives. In ASEAN's case, the Association's purposes include the following (Article 1):

- the wellbeing of the member-countries' peoples and the protection of their rights;
- the maintenance of regional peace and stability, preserving Southeast Asia as a Nuclear Weapon-Free Zone and Free of all other weapons of mass destruction;
- the integration of the regional economy for its growth and competitiveness, while fostering the creation of a single market and production in which there is free flow of goods, services and capital and facilitate movement of professionals;
- the narrowing of the development gap among ASEAN countries and the reduction of poverty within ASEAN countries;
- the strengthening of democracy and the enhancement of good governance and the rule of law, as well as the promotion and protection of human rights and fundamental freedoms;
- the conservation and protection of the region's environment for sustainable development;
- Cooperation in dealing as a region with transnational regional problems;
- Development of regional human resources through a closer cooperation in education, life-long learning and in science and technology;
- The advancement of the participation of the region's peoples in the process of ASEAN integration and community building;
- The cultivation of a sense of regional identity through the awareness of the diverse culture and heritage of the region;
- The development or establishment of effective regional institutions for maintaining the centrality and proactive role of ASEAN ad the primary driving force in its relations and cooperation with its external partners.

Legal entity

The Charter expressly establishes legal personality for ASEAN as an international organisation and makes ASEAN a subject of international law (Article 3).
This is the most significant achievement of the Charter. For one thing, the Charter would grant ASEAN status under international law and would, therefore, allow ASEAN to enter into transactions in its own right. Similarly, with this legal personality, domestic laws of ASEAN member states would have to recognise ASEAN's new status and would allow ASEAN to take advantage of certain privileges under domestic systems and law, for example sue in national courts, purchase property, enjoy tax benefits, enter into a headquarters agreement with a host country.[VI] More significantly, having a charter would be useful in providing a legal framework for incorporating ASEAN decisions, treaties and conventions into the national legislation of member countries.

'An international organisation's legal personality indicates that it is a valid subject of international law and is capable of assuming its rights and obligations. Legal personality might also help to strengthen the external perception of ASEAN as a political player on the international plane even though the precise nature of its legal character might still be unclear' (Seah 2009: 203)

'However, it is the constituent instrument, i.e. the Charter, on which its legal competence to conclude treaties with either states or other international organisations rests, that is critical. There is some force in the observation that international personality is not so much a status as a capacity: what you claim matters less than what you do (or cannot do) at international level. In its conduct of external relations, the Association's 'procedures for concluding such (international) agreements shall be prescribed by the ASEAN Coordinating Council in consultation with the ASEAN Community Councils' (Seah 2009: 203).

Organs

The ASEAN Charter also defines the institutional structure of the Association: the policy-making body (ASEAN Summit, Article 7; ASEAN Coordinating Council, Article 8); organs for implementation and monitoring of implementation of rules and decisions (ASEAN Community Council, Article 9; ASEAN Secretary-General, Article 11);

mechanism for interpreting and enforcing ASEAN rules and decisions (quasi-judicial mechanism, Article 24 - 25).

Article 7 states that the ASEAN Summit shall be the Association's supreme policymaking body and will comprise its heads of state or government. ASEAN's leaders are empowered to 'deliberate, provide policy guidance and make decisions on key issues'. Crucially, the Summit is the final arbiter on matters related to the failure to reach a consensus and settlement of disputes between member States. 'Article 7(3)(a) stipulates that Summit meetings shall be held twice annually. Since establishment in 1967, ASEAN Summits have only been held in 1976, 1977 and 1987. Thereafter ASEAN leaders experimented with a system of 'formal' and 'informal' meetings and it was not until the 7th ASEAN Summit in 2001 that this tenuous distinction was abandoned. Noteworthy, too, is the facilitative role of the ASEAN Coordinating Council (comprising ASEAN foreign ministers) under Article 8. Some of the responsibilities of this Council, which must meet at least twice a year, include undertaking 'other tasks' or 'such functions as may be assigned by the ASEAN Summit' and coordination with the ASEAN Community Councils 'to enhance policy coherence, efficiency and cooperation among them' (Seah 2009: 202).

In relation to the ASEAN Community Council, Article 9(1) states that it shall comprise the ASEAN Political-Security Community Council, ASEAN Economic Community Council and ASEAN Socio-Cultural Community Council. These councils will meet at least twice a year and are tasked (among other things) to ensure implementation of relevant decisions by the ASEAN Summit, as well as coordinate work of different sectors under their purview and issues which cut across other Community Councils. 'Finally, it is also significant that each Member State must now appoint a Permanent Representative (with the rank of Ambassador) to be based in the Association's Headquarter Jakarta. This Committee of Permanent Representatives will serve as a vital interface between the various national ASEAN secretariats, the Community Council and the Coordinating Council' (Seah 2009: 203).

The ASEAN Secretary-General (Article 11) is the highest representative of ASEAN, representing the views of the Association. The Secretary-General is responsible for facilitating and monitoring the progress of the implementation of ASEAN agreements and decisions, as well as granting the respect of the Charter. The Secretary-General is chosen among nationals of the ASEAN member States based on alphabetical rotation with due

consideration to integrity, capability and professional experience, and gender equality. The mandate lasts for a non-renewable term of five years. The Secretary-General is also the Chief Administrative Officer of ASEAN.

The ASEAN Charters lacks any explicit legally binding provision for compliance and/or credible dispute settlement mechanism. According to Article 24 of the Charter, 'Dispute relating to specific ASEAN instruments shall be settled through the mechanism and procedures provided for in such instruments […]. Article 25 is dedicated to the establishment of a Dispute Settlement Mechanism, but it does not give any further indications on how and when to establish such a mechanism. As for unresolved disputes, they should be 'referred to the ASEAN Summit, for its decision' (Article 26). In the current institutional design, neither the ASEAN Secretary-General nor the ASEAN Secretariat has the mandate to authoritatively call for compliance.

The above provisions have, therefore, raised a number of questions. Firstly, why is there a reluctance to create a mechanism for monitoring and compliance especially at a time when ASEAN is: (1) reorganising itself, (2) embarking on a number of initiatives such as the establishment of a three-pillared community based on the creation of the ASEAN Economic Community (AEC), ASEAN Security Community (ASC), and ASEAN Socio-Cultural Community (ASCC), and (3) currently facing systems overload with a small, over-burdened Secretariat? The lack of progress in moving the ASEAN Free Trade Agreement (AFTA) forward, due largely to weak implementation and backsliding of commitments by some member states, should have been sufficient to boost the case for instituting credible mechanisms with more teeth to move agreements beyond declarations to action.

Secondly, why the reliance on the Summit? It is difficult at this point in time to imagine how the Summit will act decisively on issues of compliance.

Thirdly, given the standing ASEAN practice of decision-making by consensus, which has also been reinforced by its codification in the Charter, any move towards instituting a credible enforcement mechanism is severely hampered.

With such an institutional framework in place, there is the fear that ASEAN will not be able to carry out any measures nor effectively implement many of the regional agreements — in economics, politics, security, and other functional areas — that have been agreed upon by member states.

Decision-making: importance of consensus

As for the decision making-process, a choice between intergovernmental and supranational decision making needed to be made. ASEAN chose to continue to be based on consultation and consensus, as established in Article 20 of the Charter. The persistence of the sovereignty rule is pivotal for ASEAN's intergovernmental type of regionalism, and it is explained by members' attitudes toward social trust, more than by attitudes toward institutionalisation and governance. Hence, the ASEAN Charter will not transform ASEAN into an institution with hierarchical bureaucratic organisations providing strong socialising effects, rather the Charter will maintain the network governance of ASEAN, meant as an informal way of cooperation providing information and coordinating players' behaviours and lower transaction costs.

Human Rights

Since ASEAN has never had a human rights body, the adoption of the ASEAN Charter could be viewed as a major step forward in the process of establishing a human rights mechanism in Southeast Asia.

'The Charter makes references to the imperatives of fundamental rights as legal principles. Pursuant to Article 2 (2)(i), Member States shall respect 'fundamental freedoms, the promotion and protection of human rights and the promotion of social justice'. Under 'Purposes' in Article 1(7), ASEAN seeks (among other things) to 'promote human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN'. These 'rights and responsibilities' must surely include sovereignty in both its internal and external aspects. Members, as sovereign States, remain the ultimate source of authority within their territorially defined units to promulgate and enforce laws. Whereas internally it is now common for this authority to be subjected to its Constitution as the supreme law of the State, from an external standpoint the ultimate authority must be exercised in a way that is consistent with its international legal obligations. This would now include the ASEAN Charter" (Seah 2009: 207-208). Moreover, Article 14 of the ASEAN Charter envisages an ASEAN Human Rights Body[VII], though it postpones the creation of such a mechanism to a period of time following entry

into force of the Charter itself. This body will operate in accordance with the terms of reference to be adopted by the ASEAN Ministerial Meeting. The ASEAN Charter fails to provide any tangible guidelines regarding the setting up of the body or a timeframe for establishing a human rights body, even if it calls for its creation.

Nevertheless, the non-intervention principle retains its supremacy and is placed above the adherence to the rules of human rights. Besides, the ASEAN Charter does not explicitly refer to any universally accepted human rights standards, such as the Universal Declaration of Human Rights and other major human rights treaties that have set expectations for state behaviours on human rights. Moreover, the Charter did not manifest ASEAN's collective rejection of acts that all would find abhorrent, such as genocide, ethnic cleansing, torture, the use of rape as an instrument of state power or as a weapon of war, child labour, the use of child soldiers, and discrimination on the basis of gender, race, religion or ethnicity, though condemnations of such acts are embodied in international conventions that all ASEAN countries have signed. Indeed, placing them in the ASEAN Charter would have strengthened the region's commitment to the protection of human rights.

The ASEAN approach to human rights recalls the issue of Asian values, which has been used by the Southeast Asian countries as a common denominator in order to claim that human rights universalism and indivisibility, as understood in the West, do not suit Asian conditions. This critical position was officially formulated by 34 countries in the Regional Meeting for Asia at the World Conference on Human Rights and translated into the Bangkok Declaration (1993). This declaration represents the main document containing the Asian vision of human rights. It consists of a preamble and 30 articles.[VIII] The transposition of 'Asian values' in the field of human rights has put forward four main points of criticism to human rights. According to the first argument, cultural features can affect the 'prioritising of rights', which matters when rights conflict and it must be decided which one to sacrifice. The second argument concerns the recognition of the pluralism of values for the 'justification of rights', as cultural traditions can provide the resources for local justification of human rights. The third criticism is an argument for moral pluralism. Cultural peculiarities call for different moral viewpoints in relation to Western ones. The fourth argument embodies the need for altering the current 'West-centric' human rights regime. The corollary of this critique is the inviolability of the principle of state sovereignty,

which is a fundamental principle of the ASEAN construction as explained earlier. This leaves a lot of room for ASEAN states to interpret the contents of human rights in a way that fits in with their interests.[IX]

In the process of establishing a human rights mechanism for ASEAN, challenges are certainly still ahead. Protection of human rights in Southeast Asia needs more than a spokesperson agency with no real power. What the region needs is a strong mechanism that is composed of independent experts who are able to: investigate and evaluate reports of human rights violations; consider individual complaints free from outside interference; and make decisions that the nations concerned are obliged to follow.

4. Some concluding remarks

The emergence and role of regional institutions are often the product of domestic political institutions and structures. This is very much reflected in the Association of Southeast Asian Nations and in its peculiar form of regionalism – the 'ASEAN Way'. This loose and voluntary form of regional cooperation has allowed ASEAN to act as a platform on which it is possible to promote cooperation and security within Southeast Asia, which is of strategic importance to the major powers. The latter will seek to assert their military and economic interests in Southeast Asia and this is why ASEAN has assiduously tried to facilitate an open regional architecture. The Association has strived to take the 'driver's seat' in the region, not because ASEAN is powerful but because it is completely non-threatening and is able to engage the major powers in a fair and reliable way.

During its first forty years of existence, ASEAN has been a 'cluster of common procedure, personal relations, and common identity' (Kivimäki 2008: 433). Indeed, ideas have been key elements among ASEAN members on how to promote an identified geographical or social space as a regional project. Cooperation has never been an end in itself but has always been the manifestation of interests pursued by players who have been convinced that their interests can be accomplished through cooperation.

The ASEAN Charter, despite its attenuated substance and enforcement mechanism, is a legally binding document which has generated some political momentum for ASEAN's objectives. It is a manifestation of 'regional ego' to the major powers that ASEAN is

capable of forging common positions on key issues that matter to the parties and is also serious about its role in the regional architecture (Seah 2009: 211).

Set against the Western liberal approach to global governance, which is defined as an overarching system with regulates human affairs on a worldwide basis, ASEAN has the potential to become an alternative normative model for global governance, especially if it finds support among other countries and rising powers. This alternative model can offer ASEAN members the achievement of important goals they have set, mainly peace and economic development. Moreover, this highlights members' interest in ensuring that international political obligations are respected by everyone in the international community and that the region is secure and stable.

While one cannot deny the weaknesses found in the Charter, there are spaces that can be found to push the agenda for change in the region. One of these is the very fact that ASEAN now has a Charter that has — to all intents and purposes — finally codified its key principles and purposes. The Charter has become the legal basis for taking any member State to task if it is seen to be in egregious violation of these principles. Similarly, while it is unfortunate that the provision for establishing a human rights body lacks specific details, the fact that this is now incorporated into the Charter makes it incumbent on ASEAN members to act on this — sooner, if not, later.

Despite its imperfections, there is nothing that can stop the States and societies of this region from wanting to amend and/or add more provisions to the Charter, as and when the need arises and given the growing demand for regional institutions to be responsive to new and emerging challenges. To this end, the adoption of the Charter is in itself a step, albeit small, in the right direction. One can therefore argue that despite what appeared to be a lost opportunity to have a good Charter, at the end of the day the Charter still does matter. The momentum in pushing ahead with change that is already gaining ground in the region should not be wasted. The Charter can thus still provide an opportunity for change that should not be missed. The developments listed in this paper have highlighted the huge challenges ahead in endowing ASEAN with legal force while reforming its regulatory framework. To be sure, domestic politics inside the member countries have been and will continue to be of particular importance in the success or failure of such visions. Nevertheless, the stage appears to have been set for greater engagement and more contestation — not less. In fact, we are already beginning to witness the dynamics of

regionalism being pried opened beyond the traditional confines of closed-door diplomacy. Thus, as one reviews the developments that took place at different points over the course of the two years that it took to draft and finally adopt the Charter, one discerns the winds of change in the nature of state-to-state and society-to-state interactions in the region.

Finally, the continued survival of ASEAN greatly depends on its ability to cohere as a regional organisation and yet remain steadfastly open to the world (Seah 2009: 212). The ASEAN Charter should be concerned with how to strengthen ASEAN's capacity to influence the ability and willingness of major powers to assert their interests in this region; and with how to promote ASEAN's identity, as the promotion of such identity is relevant for the further development of ASEAN as a regional organisation.

In particular, ASEAN must be ready to confront external challenges, such as possible alternative platforms to attempt at the Association's role in Southeast Asia (i.e. Six-party Mechanism, Shanghai Cooperation Organization); the US influence in the region; putative hegemonic powers such as China that could disturb the existing distribution of power.

As for ASEAN's image outside the region, the developments before and after the adoption of the ASEAN Charter might have cast doubt on the ability of the grouping to seriously take up its role as a pivotal player in the wider Asia-Pacific region. The conservatism and perceived rigidity reflected in the Charter highlight the obstacles faced by ASEAN in pushing ahead with its vision of building a dynamic three-pillared community. Instead, what has come to light is the fact that even with an ASEAN Charter, it is still pretty much 'business as usual' in ASEAN, in which the usual features — decision-making by consensus, working on the lowest common denominator, strict adherence to the principle of non-interference and reticence towards any form of sanction for non-compliance — remain unchanged.

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[I] A regional identity refers to a collective identity, or supra-national identity. Usually it can be divided into symbolic/institutional and value identities. The notion of *identity* addresses the 'we-ness' of a group, stressing their similarities or shared attributes around which group members coalesce. Therefore, the identities are intrinsically connected to references to culture, which becomes the structuring element of communities or of wider contexts. Values are the nucleus where specific groups of subjects – it does not matter whether individuals or States – define their identities and/or their interests. Values are the sum of different assessments, attitudes, recognition and behaviour in relation to various phenomena. Values also measure inclusion and exclusion, as they distinguish the boundary between 'Self' and 'Other'.

[II] ASEAN Treaty of 1967 has three chapters, 55 articles, and four annexes. While it was only signed by ASEAN Leaders, the ASEAN Charter had to be ratified by each member country, according to each one's ratification and legislative processes. The ASEAN Charter is available at www.aseansec.org/21069.pdf.

[III] This means cooperative and/or common security, embodying a number of principles: the non-legitimacy of military force for resolving disputes, security through reassurance rather than unilateral military superiority, non-provocative defence, transparency.

[IV] See Media Release, 'ASEAN Leaders Sign ASEAN Charter', Singapore, 20 November 2007, available at http://www.aseansec.org/21085.htm.

[V] Ibid.

[VI] For instance, in Singapore, Chapter 145 of the International Organisations Act confers privileges on international organisations such as the APEC Secretariat, IBRD, MIGA, UN and ICJ, UNESCO, WHO, WIPO.

[VII] Article 14 of the ASEAN Charter 'ASEAN shall establish an ASEAN human rights body'.

[VIII] A double interpretation can be applied to the Bangkok Declaration: on one hand it reaffirms the adherence of Asian countries to the principles of the Universal Declaration on Human Rights (1948), recognising the universality, interdependence, objectivity and indivisibility of human rights and sustaining the relevance of avoiding double standards in the implementation of human rights; on the other hand, the Bangkok Declaration affirms that the promotion of human rights is based on cooperation and consensus, and not on the imposition of incompatible values.

[IX] In total, after 40 years since its establishment, ASEAN has been able to produce five declarations on human rights: the Declaration of the Advancement of Women in the ASEAN Region (1988), Declaration on the Commitments for Children in ASEAN (2001), Declaration against Trafficking in Persons Particularly Women and Children (2004), Declaration on the Elimination of Violence Against Women in the ASEAN Region (2004), and Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007). These declarations, however, are not legally binding. They merely include political commitments and do not specifically say how they will implement their provisions.

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The Italian Parliament paves the way to "fiscal federalism"

by

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Abstract

This article examines law no. 42 of 2009 which, in accordance with art. 119 of the Constitution, opens the way to the introduction of "fiscal federalism" in Italy. The new law falls within the sphere of the Reform of Title V of the Constitution of 2001. Following a brief reconstruction of the genesis of the text, the author emphasises the choice of law of delegation to the Government for the implementation of fiscal federalism and examines the consequences. The Article analyses the most important principles and directive criteria contained in the law, tackles certain problematical aspects and highlights some unresolved issues within the text.

Key-words:

Fiscal federalism, art. 119 Const., law no. 42/2009, principles and directive criteria

1. Some initial considerations about law no. 42 of 2009 on "fiscal federalism"

The entry into force of Law no. 42 on fiscal federalism on 5 May 2009[I], - "Delegation to the Government on the matter of fiscal federalism, in accordance with article 119 of the Constitution" –undoubtedly represents a significant step in the process to adapt the Italian order to the Reform of Title V of the Constitution of 2001 which, up until now, has been decidedly complex and problematical[II]. The only organic legislative intervention to implement this significant constitutional reform, which completely redesigned the relationships between State, Regions and Local Authorities, launching a federalist process in Italy, dates back to the "La Loggia" law of 2003, which actually only allowed a partial and defective implementation of the new Title V of the Constitution[III].

The constitutional legislator of 2001 introduced deep changes to the relations between State, Regions and Local Authorities with regard to legislative and administrative competencies in order to increase the functions that fall under the jurisdiction of the autonomous entities (articles 114, 117 and 118 Const.). The attribution of new and significant competencies to Regions and Local Authorities required the possession by the Authorities of the financial resources needed to perform the functions assigned to them by the Constitution. To this end, the financial autonomy of Regions and Local Authorities is guaranteed and regulated by art. 119 Const.[IV], which was also amended by the Reform of 2001, but the new constitutional provision requires organic implementation by the state legislator to allow effective entry of what is known as "fiscal federalism" [V] into force in Italy.

Taking a brief look at the principles contained in art. 119 of the Italian Constitution, it must be said that it guarantees all the territorial entities of the Republic complete financial autonomy with regard to income and expenditure. On the basis of the constitutional measure, Regions and Local Authorities have three types of resources: own taxes, participation in the revenue from treasury taxes referable to their territory and portions of the standardising reserve set up by Government Law for territories with less

fiscal capacity per inhabitant. A law for the coordination of public finance and the tax system (matter of legislative jurisdiction between State and Regions pursuant to art. 117, par. 3, Const.) establishes the complex of these resources which must, however, allow the territorial bodies to fully finance the cost of the public functions assigned to them.

The failed legislative implementation of the constitutional design for the financial autonomy of the territorial authorities was undoubtedly one of the main reasons behind the difficult and insufficient application of the new Title V, which has distinguished, up to now, the period of time following the entry into force of the Reform of 2001. The territorial authorities must be put in a position to be able to effectively perform the functions assigned to them and, in order to do so, they need autonomy in terms of income and expenditure. As emphasised by the Constitutional Court – which has also pursued a form of "additional" jurisprudence to make up for the failed legislative intervention[VI], jurisprudence which the same Court has described as completely insufficient – the implementation of art. 119 Const. is of the utmost urgency "*in order to make the provisions of the new Title V of the Constitution tangible, because otherwise the different area of jurisdiction configured by the new provisions would be contradicted*"[VII].

The implementation of the financial autonomy of Regions and Local Authorities envisaged by art. 119 Const. forms one of the crucial nodes along the road of the federalist process underway in Italy. From this point of view, the legislative implementation of fiscal federalism can represent something brand new in the evolution of relations between State and Autonomous Entities in the Italian legal order.

Some brief considerations ought to be made in relation to the path which led to Parliament's approval of a text which is substantially shared. The "origins" of law 42/2009 can be traced back to a joint document approved by the Regions in July 2005, the so-called "Santa Trada Document", which laid the foundations for the approval, by the Prodi Government in 2007, of a project which was never examined by Parliament due to the early termination of the XV legislature. The bill approved by the Berlusconi Government in October 2008 (the "Calderoli Project" named after the Minister who proposed it)[VIII] contained much of the text previously drawn up by the Prodi Government.

The text has been amended several times, also to acknowledge requests forwarded by the territorial authorities, and was approved by all the autonomies during the State-Regions-Towns and Local Authorities Unified Conference ("Conferenza Unificata"). The

consensus of the Regions and Local Authorities was necessary to avoid the risk of opposition by the territorial authorities during the following implementing phase of a reform approved by Parliament against their will.

The proposed legislation was met with substantial consensus not only among the various institutional levels of government, but also, and this should be emphasised because it is rather unusual in recent Italian parliamentary experience, among the political parties present in Parliament[IX]. In the Chamber of Deputies and in the Senate too, the provision was unanimously approved by the parliamentary majority and also by one of the opposition parties – "*l'Italia dei Valori*". The main opposition party, the "*Partito Democratico*", presented no opposition to the provision, despite finally deciding to abstain from voting on the bill, and actively participated in the review of the text carried forward in Parliament, advancing numerous proposals, many of which acknowledged by the majority. During the various parliamentary passages, the bill underwent several amendments to the text approved by the Council of Ministers, as proven by the overall number of articles within it, which has risen to 29 from the initial 22. During the final voting session, the *Partito Democratico* explicitly emphasised its active contribution to the improvements made to the text[X]. The "*Unione di Centro*" was the only parliamentary group to vote against the bill.

The legislative measure used to implement art. 119 Const. is that of law of delegation to the Government, which gives the Government two years to adopt the legislative decrees for its implementation ("*one or more legislative decrees", art.* 2, par. 1)[XI]. This is a significant choice which opens the way to a definitely long and uncertain path towards the implementation of fiscal federalism in Italy. Unlike the decision, made with the aforementioned "La Loggia" law of 2003, to implement the renewed Title V of the Constitution through an organic law developed in Parliament, for the implementation of fiscal federalism the measure of law of delegation was preferred, prefiguring at least the work of an entire legislature[XII]. Said law no. 42, besides establishing the term of two years for the adoption of the legislative decrees, outlines a transitory period of five years before one of the qualifying points of the Reform comes fully into force, meaning the passage to the so-called criteria of "standard expenditure", which will be described in detail further ahead. Even after the entry into force of this law, the date for the effective implementation of fiscal federalism and, especially, the methods which will be used for its full implementation, still have to be established.

2. A "maxi-delegation" to the Government for the accomplishment of fiscal federalism

Law 42/2009 approved by Parliament to implement art. 119 Const. can be considered substantially as a very broad and articulate delegation given to Government[XIII]. The consequence of the decision to use the measure of the law of delegation and to limit action to the enunciation of general principles and directive criteria is the substantial exclusion of Parliament from the subsequent – and decisive – phase of effective implementation of fiscal federalism which will be assigned, using the delegated decrees, to the Executive. Consequently the Government, aided by the opinions of a special Parliamentary Commission[XIV], will establish the rules that will indicate the methods used to implement the financial autonomy of the territorial authorities envisaged in the Constitution. The exclusion of Parliament from the future decision-making process is undoubtedly one of the most critical aspects of the proxy law on fiscal federalism.

On this matter, there were also those who felt that the bill presented by the Government contained a "blank delegation" which gave the Government a free rein for the preparation of legislative decrees[XV], as the content of the provision was rather generalised in the identification of the principles and the guidelines to be complied with by the delegated legislator. Parliament amplified and, in some parts, specified the content of the proxy law bill in greater detail, prior to its approval and, while some parts of the final text do not contain sufficiently precise criteria to outline the main characteristics of the new financing system[XVI], generally speaking, the principles and directive criteria seem to be quite detailed, if a little hard to read.

The text approved by Parliament cannot therefore be classed as a blank delegation to the Government, but nor is it an organic law containing a direct and complete bill for the implementation of art. 119 Const. Law no. 42 can be considered as a "maxi delegation" full of principles and directive criteria which require translation into implementing measures by the successive delegated decrees issued by the Government. It is also worth highlighting that the law also excludes Parliament from the successive (if any) phase of

intervention to correct and improve the reform, as it entrusts the task of introducing additions and corrections to the legislative decrees previously adopted by the Government to further legislative decrees of the Executive (art. 2, par. 7)[XVII].

With the aim of compensating, at least partially, for the absolute marginalisation of the role of the body which directly represents the general will during the actual structuring of the reform process, the Senate amended the original government text assigning a supervisory role to Parliament during the fiscal federalism implementation process. The law sets up a special Bicameral Commission, known as the *Parliamentary Commission for the implementation of fiscal federalism* (hereinafter *Parliamentary Commission*) (art.3), which will be responsible for expressing opinions on the layouts of the legislative decrees drawn up by the Executive and checking the state of implementation of the provisions contained in the proxy law. In order to favour the link between the *Parliamentary Commission* and the territorial autonomies, a special "Committee" made up of the representatives of the Regions and Local Authorities is also created, and will meet at the Parliamentary Assemblies[XVIII]: every time it sees fit, the *Parliamentary Commission* may consult this Committee and hear its opinions[XIX].

The formation of this Committee as a link between Parliament and the system of autonomies must be seen in a positive light, especially considering the ongoing absence of a Second Chamber in Italy as the expression of the territorial autonomies. The best choice however would have been to finally implement art. 11 of Constitutional Law 3/2001 which allows the integration, via amendment of the parliamentary rules, of the Bicameral Commission for regional issues with representatives of the Regions and Local Authorities, entrusting this Commission the task of supervising the implementation of fiscal federalism[XX].

The law also sets up two more specific bodies created to carry forward the actuation and implementation of the reform. The *Permanent Conference for the coordination of public finance* (art. 5), of which the representatives of the different institutional levels of government are part, something which is definitely positive, has numerous important competencies, including the contribution to the definition of the objectives of public finance and the performance of functions of verification of the new financial arrangement, especially with regard to the decisive and innovative aspects of the law which will be described further ahead, such as the realisation of the path of convergence to standard

costs and the application of the mechanisms relating to sanctions and rewards. The *Joint Technical Commission for the implementation of fiscal federalism* (art.4), made up of thirty members, half of which are technical representatives of the State and the other half of which represent the territorial authorities, on the other hand will operate within the scope of the *Unified Conference* and is the body appointed to acquire the elements needed to prepare legislative decrees and to provide the *Permanent conference* with the technical assistance for performance of its functions[XXI].

The creation of these special supervising bodies and, particularly, of the *Parliamentary Commission*, does not however allow a solution to the critical node deriving from the exclusion of Parliament in the following implementation process of fiscal federalism. The envisaged subjection of the layouts of delegated decrees – on which it is necessary to reach an agreement during the *Unified Conference*[XXII] – in the advice of the *Parliamentary Commission* (art. 2, par. 3) cannot be considered sufficient as these advices are not considered binding by the Government, which can proceed and adopt the decrees even without conforming to the instructions expressed by the parliamentary control body[XXIII]. Moreover, the position of the *Parliamentary Commission* should be further weakened if we consider that it will have to express its opinions on the outlines of delegated decrees which will presumably go to Parliament "strengthened" by the prior agreement reached into the *Unified Conference.*

The law of delegation on fiscal federalism ends up stripping Parliament of its prerogatives. Consequently the decision to have assigned Government such extensive legislative delegation is one that it is hard to agree with. It would have been better to implement art. 119 Const. – on the model of the "La Loggia" law which also contained legislative powers of attorney – through the approval of an organic law which would enable Parliament to decide with regard to the decisive choices to be made, benefiting from the dialectic confrontation between the parliamentary majority and the opposition on a matter which, we ought to remember, deeply influences the effective level of independence of the territorial authorities and therefore also, in the last instance, on the form of State.

The substantial alienation of Parliament from the decision-making process which leads to the approval of numerous legislative acts and is implemented in the large-scale use by the Executive of the decreeing of urgency, the use of the instrument of confidence (*questione di fiducia*) or, as in this case, of laws containing very broad delegations, despite

having been common in Italy for some time and having undergone a considerable increase during the current legislature, shouldn't concern a matter such as this, which is potentially capable of completely rearranging the country's financial layout.

3. The principles contained in law no. 42

The law no. 42 contains several general principles which aim to draft the overall layout of the fiscal federalism model which this process of reform intends to accomplish.

The most innovative and important principle consists in the introduction of the so-called "standard cost" criterion[XXIV] in place of the "historical expense" criteria used so far to determine the costs necessary to the pursuit of the functions entrusted to the territorial bodies. The gradual elimination of the historical cost criterion, according to which the funding of the functions of territorial bodies is established on the basis of what they have effectively spent during the exercise of those functions within a given space of time, in favour of the standard cost criterion, on the basis of which the cost for the provision of a function is established on a preliminary basis and must be the same throughout the whole Country, represents something absolutely innovative.

The use of the standard cost criterion will not however regard all the functions of the Regions and Local Authorities, but only the regional functions connected to the essential levels of services concerning civil and social rights pursuant to art. 117, par. 2, lett. *m)* Const. (health, assistance and education, with the addition of local public transport) and the functions of Local Authorities related to "fundamental functions" – which have not yet been identified with a legislative intervention - to which art. 117, par. 2 lett. *p)* Const. refers. It should also be pointed out that costs for health, assistance, education and local public transport regard about ninety percent of the expenses sustained by the Regions.

The passage to standard costs encompasses the objective, claimed by the law (art. 1, art. 2, par. 2) to guarantee the principles of responsibility, effectiveness and transparency of democratic control with regard to those elected at all levels of government. This desirable passage is necessary due to the fact that it is no longer acceptable, especially considering the current economic crisis, for the same services to have such hugely different costs depending on the area in which they are performed. The final termination of this

system which has perpetuated government funding of bad management, has however been considerably delayed. The law envisages a transitory term of five years before the standard cost criterion becomes fully operational and finally replaces the historical expense criterion (articles 20 and 21).

The use of standard costs as a tool to enable the passage towards an effective and responsible financial independence of the territorial bodies is a principle that is undoubtedly one to be shared. However, the law only refers to this principle but supplies no indication as to the methods to be used to establish the standard costs of the functions connected to the "essential levels of service" and "fundamental functions". The tangible determination of the standard costs – a considerably complex operation which represents one of the crucial aspects of the implementation of the "design" of fiscal federalism prefigured by this law – is therefore entrusted entirely to the Government via the issue of delegated decrees, without the legislator having set any criterion to guide the action.

A second innovative principle, closely linked to the passage to the standard cost criterion and to the previously mentioned objective of the law to guarantee the creation of responsibility and transparency of democratic control for all levels of government, regards the introduction of responsibility by the directors of territorial bodies by envisaging rewarding and sanctioning mechanisms (art. art. 2, par. 2, lett. *z*) and art. 17, par. 1, lett. *e)*)[XXV]. The law envisages the introduction of a rewards system for Bodies that virtuously manage their regional and local budget policies but in this case too, it is still rather vague with regard to the new system's operating methods and mechanisms. The same goes for the sanctioning methods of government bodies which fail to respect the economic-financial balances or to guarantee the essential levels of services concerning civil and social rights, but in addition to the possibility of exercising the substitutive power pursuant to art. 120 Const., it is worth mentioning the ruling which heavily sanctions directors who lead the body into a situation of financial difficulty, with the identification of cases of non-election being requested.

These are principles which, despite being excessively generalised, can be agreed with considering that, to date, Italian history has been distinguished by the poor financial administration of various territorial bodies and by Government interventions *ex post* to balance the situation which, paradoxically, rewarded the policies of financial debts and waste[XXVI]. In preparing tangible sanctioning mechanisms, it will be necessary to ensure that

bad management by the authorities does not excessively penalise the community, at least as far as the enjoyment of social rights is concerned[XXVII].

Besides that mentioned above, the text contains other principles, some of which are less innovative, but which nevertheless contribute to providing a much clearer picture of the overall reform drawn up by the legislator. It would seem particularly appropriate to draw attention to the following points:

- the structural principle which refers to the link between autonomy of income and expenditure and the creation of administrative, financial and accounting responsibility at all levels of government is stated (art. 2, par. 2, lett. *a)*);
- the "principle of territory" based upon the territorial nature of the regional and local taxes and on the reference to the territory of the co-participations in revenue from state taxes is introduced ability (art. 2, par. 2, lett. *e*) and lett. *hh*)): in compliance with that envisaged by art. 119, par. 2, Const., therefore, it is established that the principle by which the co-participation available to Regions and Local Authorities has to be proportionate to the revenue generated in the territory of reference;
- the ban on double taxation (state and regional) of the same taxable amount is established (art. 2, par. 2, lett. *o)*). This is a fundamental principle of the federal orders which aims to prevent an increase in the fiscal weight placed upon the same asset;
- the principle of relationship between tax levy and benefit connected to the functions exercised on the territory is introduced, in order to encourage the correspondence between financial and administrative responsibility (art. 2, par. 2, lett. *p)*);
- regional tax autonomy is acknowledged (this guarantee was already contained in art. 119 Const.) and it is envisaged that the regional law can create regional and local taxes and determine changes in the rates and subsidies that the Local Authorities can apply in the exercise of their autonomy (art. 2, par. 2, lett. *q)*);
- margins of regional tax autonomy are acknowledged, also in the sense that it is possible to introduce exemptions, detractions, deductions and special subsidies (art. 7);
- the Regions are given the chance to set up co-participations in tax revenue in favour of the Local Authorities as well as regional co-participations (art. 2, par. 2, lett. *s)*);
- the principle of flexibility and fiscal manoeuvrability in the formation of combinations of taxes and co-participations is introduced (art. 2, par. 2, lett. *bb)*).

In implementing paragraph two, lett. *e*), of art.117 Const. and paragraph three of art. 119 Const., which assigns the state legislator the task of setting up a compensation fund – without restrictions in terms of designation – for territories with less fiscal capacity per inhabitant, law no. 42 of 2009 also establishes the directive principles and criteria in relation to determining a compensation fund in favour of the Regions and two funds in favour of the Local Authorities[XXVIII].

As regards the compensation fund in favour of Regions with less fiscal capacity per inhabitant (art. 9), it is fed by the revenue generated by a co-participation in revenue from "VAT" assigned for expenses relating to "essential levels of service"[XXIX] and by a part of the average balancing rate of the regional addition to the "Irpef" tax for expenses other than those at essential level. Consequently the regional fund will be financed both by the State and by the Regions. As far as the distribution of the resources deriving from compensation are concerned, the law introduces the general principle on the basis of which the job of compensation consists in properly reducing the differences between the territories, with varying fiscal capacity per inhabitant, without however altering the differences between Regions and without "preventing the alteration in time due to the evolution of the economic-territorial situation".

With regard to the compensation fund for Local Authorities (art. 13), the law envisages the setting up of two funds, the first in favour of the Municipalities and the second in favour of the "Provinces" and "Metropolitan Cities". The funds are set up in the budgets of the regions and must come from a State compensation fund fed by general taxes. The sharing of the compensation funds among the single Bodies takes place on the basis of two ratios: the first is a "financial requirement" ratio, calculated as the difference between the standard value of current expenditure net of interest, and the standard value of the revenue from general taxes and income; the second comes from the identification of "infrastructure requirement" ratios, in keeping with the regional programming for the sector and considering the extent of the European funds designation for infrastructures received by the Local Authorities.

4. The distinction between "typologies" of functions of Regions and Local Authorities

As regards the functions attributed to Regions and Local Authorities, the law makes a distinction between types of functions, envisaging a different coverage of costs on the basis of this differentiation. The law identifies two types of functions: for Regions, those traceable to essential levels of service relating to civil and social rights (to which local public transport is added) on one hand and all other functions on the other; for Local Authorities, the functions traceable to "fundamental functions" on one and all other functions on the other. The funding of functions which can be connected to essential levels of service with regard to the Regions and to fundamental functions with regard to Local Authorities must be calculated, as mentioned, on the basis of the standard cost criterion and must guarantee the complete coverage of the expenses necessary to finance these types of functions[XXX]. For the funding of other functions not traceable to this first category, the complete coverage of costs linked to their exercise is not expressly guaranteed by the law.

This distinction between types of functions made by the law does not appear entirely to be justifiable and, above all the guarantee of the complete financial coverage of only some of the functions that the territorial autonomies are required to perform raises doubts in terms of constitutional legitimacy. Art. 119, par. 4, Const., as mentioned earlier, envisages that the resources due, in accordance with the previous paragraphs, to Regions and Local Authorities have to enable the complete funding of the functions assigned to them, without any distinction between types of functions. The fact that only the regional functions connected to "essential levels of service" and the functions of the Local Authorities referable to "fundamental functions" are guaranteed complete financial coverage risks having a negative effect on the effective financial autonomy of the territorial bodies and seems to contrast with art. 119 Const.[XXXI].

5. Some issues which are not resolved by the law on fiscal federalism

The possibility of seeing fiscal federalism tangibly achieved in the Italian system also passes through the solution of certain important issues on which the text provides no precise answer, in some cases actually choosing not to decide.

As regards the question of relations between Regions and Local Authorities, the law chooses the path of continuity, referring to the system in force, and does not assign the Regions powers of connection and coordination of the fiscal activities of Local Authorities, simply envisaging two separate financial systems for Regions and Local Authorities. The system of regional taxes includes derivative taxes regulated by state laws, add-ons to the taxable bases of state taxes and regional taxes regulated by the Regions with a law in relation to the assumptions which are not already subjected to state taxation (art. 7). The Local Authorities on the other hand have their own taxes identified by state law, the tax related to road transport which must enable the coverage of the financial expenses of the Provinces, general taxes regulated by state law, local taxes regulated by regional law and tariffs for services offered also by request of single citizens (art. 12).

While the confirmation of a financial system operating on "several circuits" is undoubtedly in line with the picture envisaged by the constitutional Reform of 2001, which levelled all the Bodies that make up the Republic (art. 114 Const.) and did not establish hierarchical relationships between Regions and Local Authorities, the failure to introduce even slight forms of regional fiscal and financial coordination of the Local Authorities emphasises once again the "peculiarity" of the Italian federalist process. In countries like Germany and Spain, the parties involved in the distribution of financial resources are basically Central Government and the Federate or Regional Authorities. In Italy on the other hand, there is a plurality of institutional subjects – besides the Government and Regions, Regions with "special Statutes" (Special Regions) that benefit from a special financial regulations[XXXII], the Provinces, the Municipalities, the "Metropolitan Cities" and "Rome capital" for which a further special system is envisaged[XXXIII] - which is probably destined to make the determination of a consistent financial layout in the country targeting efficient fiscal federalism even more complicated. With the approval of this law, the Local

Authorities will continue to have the State as their main point of reference, also with regard to financial issues.

A second largely unresolved node is that regarding the difficulties of reconciling the implementation of fiscal federalism with the layout of funding for the Special Regions and Autonomous Provinces of Trento and Bolzano[XXXIV], considering that the construction of a new and consistent financial system articulated across several levels of government cannot be separated from the involvement of the Special Regions. These Regions enjoy a funding system which does not correspond to that envisaged by art 119, par. 4, Const., on the basis of which the financial resources allocated to the territorial body coincide with the costs necessary to the pursuit of the functions assigned to it, which is based on the allocation of very high percentages (in some cases 100%) of taxes ascertained within the territory, regardless of the functions performed and the relative costs. This system is obviously advantageous to the Special Regions, enabling them to enjoy a financial independence which lies outside the dictates of art. 119 Const.

The law no. 42, while establishing that the Special Regions concur to the pursuit of the aims of compensation and solidarity and are subject to the restrictions of the internal stability pact according to criteria to be defined with the laws implementing the respective statutes, has confirmed the financial "speciality" of these Regions, prefiguring the construction of specific financial systems for them (art. 27)[XXXV]. An amendment to the draft law approved by the Chamber of Deputies has introduced a rule which envisages the creation of special "tables" for confrontation between the Government and each Special Region: these tables will establish the methods by which the Authorities with differentiated autonomy concur to the pursuit of the aims of compensation and solidarity, as well as how to assess the congruity of the further financial allocations made after the entry into force of the respective statutes, verifying the consistency with the principles contained in the present law.

On the tricky issue of the system of financial autonomy of the Special Regions, the law has maintained the original special system enjoyed by the latter and has chosen not to choose, deferring the nodes of the issue to future laws for the implementation of the special statutes and, above all, to the new institutional seat of confrontation between Government and Special Autonomies. The plan for a financial system for the Special Regions which is consistent with art. 119 Const. and with its implementing laws is however

an essential condition to draw up a financial arrangement that guarantees the overall cohesion and unitary nature of the system[XXXVI]. Everything seems to have been postponed until further development take place and, also in this case, Parliament will be excluded from the decision-making processes that will have to clearly establish the financial and fiscal layout of the special autonomies in the fiscal federalism implementation process.

A further question which remains open even after the approval of the law on fiscal federalism regards the financial data and overall figures of this reform, which have not been characterised by the necessary transparency up to now. The rules of this law almost always refer to numbers and calculations that have to be carried out on the basis of tangible data in order to effectively implement the reform. In the law of delegation there is absolutely no reference to financial data and figures which should already have been made available to the legislator to guide the political choices and the collection of the data necessary to issue legislative decrees has been deferred until later – when Parliament will no longer have legislative power. The collection of the data will be managed by the Government, aided by the indications of the *Joint Technical Commission for the Implementation of Fiscal Federalism*[XXXVII]. Therefore the decision has been made to invert the logical order which should have meant that Parliament would have reliable financial data before approving the laws on the financial and fiscal reform of the system. The legislative body would also, in this case, have had the possibility to specify the content of the legislative delegation in various points, preventing Government from having so much room to manoeuvre.

The law no. 42 establishes, at a general level, that the implementation of the law and the delegated decrees must be compatible with the pact of stability and growth and, above all, via an amendment approved by the Chamber of Deputies, it introduces the principle according to which the reform must not give rise to new or higher charges for public finance (art. 28, par. 1 and par. 4). The aim is to achieve a financial and fiscal reform with "zero costs".

It must be remembered however that the choice to go ahead with Parliamentary approval of a regulatory text without the availability of precise financial data and figures has already been pursued to open up the way for an equally significant federalist reform in Italy, known as "administrative federalism"[XXXVIII]. The aim of that reform was the transferral of numerous administrative functions from the State to the Territorial

Authorities. In envisaging different delegations to Government in order to enable the implementation of said reform, law no. 59 of 1997 (the "Bassanini" law), also contained the principle of the reform at "zero costs" and failed to provide a precise indication of the overall figures relating to the implementation of the so-called administrative federalism.

6. Brief conclusive considerations

The law of delegation approved by Parliament cannot be considered as an arrival point for the financial independence of Regions and Local Authorities, but represents a first step on the path to the implementation of fiscal federalism in Italy.

The decision not to directly and effectively implement art. 119 Const., deferring this task to the Executive by using a "maxi delegation" – with all the criticalities that ensure and which are explained above – implicates a further delay (of at least five years) to the entry into full operation of fiscal federalism and the start of a long transition period[XXXIX]. Further procrastination of the lack of final implementation of art. 119 Const., which should have been one of the first areas of intervention of the legislator after the Constitutional Reform of 2001, can have negative consequences on the whole implementation of Title V of the Constitution, given the evident and indissoluble link – mentioned at the beginning – between the accomplishment of the financial autonomy of income and expenditure of the Territorial Authorities and their effective capacity to perform the functions assigned to them by the Constitution.

The text approved by Parliament also contains important innovative principles such as the introduction of the standard cost criterion and the envisaged rewarding and sanctioning mechanisms to create greater responsibility by the Territorial Authorities and their administrators, but although it brings innovation, it is also restricted to tracing the general outlines of a layout which has still to be tangibly defined in terms of its essential aspects[XL]. Taking a look, for example, at the definition of standard costs, which probably represent the core of the whole legislative design: the law does not tackle the issue of the possible diversification of the costs of the same function from one Body to another due to the structural differences between the territories or to their different demographic

composition and does not generally indicate the methods used to determine and quantify the standard costs.

Consequently we are still in an interlocutory phase which will lead to subsequent passages, the outcome of which cannot be taken for granted and is also linked to the positive resolution of certain systemic nodes of the new Title V of the Constitution that are still substantially unresolved and must be tackled by the legislator. These nodes include the redefinition of the holding of administrative functions to be divided among Government, Regions and Local Authorities on the basis of art.118 Const., the identification and the detailed definition of the "essential levels of service" and "fundamental functions" of the Local Authorities, the relationship between Regions and Local Authorities and the re-modulation of the Special Autonomies.

I On law no. 42/2009 see Martines T., Ruggeri A. , Salazar C., 2009; Nicotra V., Pizzetti F., Scozzese S., 2009; Jorio E, Gambino S., D'Ignazio G., 2009.

II Further confirmation of the partial and incomplete implementation by the legislator of the new Title V of the Constitution also comes from law no. 42 of 2009 on fiscal federalism. In order to make the implementation of this law possible, law no. 42 has had to intervene with regard to the institutional profiles of the Local Authorities with a transitory ruling (art. 21) until a law implementing art.118 Const. is passed. The law in question also had to envisage a transitory ruling on the regulation (also at a financial level) of Metropolitan Cities, (art. 23) and of Rome Capital organisation (art. 24), in order to provisionally implement art. 114 Const. Both the institutions of the Metropolitan Cities and Rome Capital were envisaged by the constitutional reform of 2001 but the legislator has still not taken action to envisage an organic regulation of this Territorial Bodies.

III For complete details on law no. 131 of 5 June 2003 – known as the "La Loggia" law – see Various Authors, 2003.

IV On the regulation of financial independence contained in art. 119 Const., see, among numerous written materials, Antonini L. 2003; Giarda P., 2001; Pitruzzella G., 2002; Brancasi A. 2003; Covino F., 2001; Della Cananea G., 2006.
For an overview of the contents of the constitutional standards of the other European states on the subject of the financial independence of territorial bodies Various Authors, 2001; Covino F., 2005.

V In general, on "fiscal federalism" in Italy, Giarda P., 1995. On fiscal federalism from the point of view of its possible implementation in Italy in the light of the new art. 119 Const., see, among the numerous contributions, Bassanini F. Maciotta G.,2003; Bassanini F., 2008; Antonini L. 2005; Giarda P., 2005, *L'esperienza italiana di federalismo fiscale: una rivisitazione del decreto 56/2000*, Bologna.

VI Cf. Caretti P.- Tarli Barbieri G., 2007.

VII Cf. Constitutional Corte, ruling no. 370/2003. As regards the copious jurisprudence of the Constitutional Court on the matter of the implementation of art. 119 Const., see, amongst others, ruling no. 370/2003; 16/2004 37/2004; 381/2004; 431/2004; 397/2005; 455/2005, 2/2006. On the jurisprudence of the Constitutional Court on the matter, see Salazar C., 2004; Antonini L., 2003, *La prima giurisprudenza costituzionale sul federalismo fiscale: il caso dell'Irap (nota a C. Const. n. 296/2003)*, in *Rivista di diritto finanziario e scienza delle finanze*.,97; Morrone A., 2004.

VIII For a detailed and analytical comment on the draft law on fiscal federalism presented by the Government in Parliament see Bassanini F. - Maciotta G.,2008.

IX In the final election at the Chamber, out of 549, there were 319 votes in favour, 195 abstentions and 35 votes against. At the Senate, out of 248, there were 154 votes in favour, 87 abstentions and 6 votes against.

X In the declarations of the final election at the Chamber, Antonello Soro, Group leader of the PD for the Chamber, thanked the members of his Group for their commitment "which has enabled substantial

improvements to the provision under examination, with which however my party cannot fully identify" (Chamber of Deputies, Reports on session no. 151 held of Tuesday 24 March 2009).

[xi] Art. 2 par. 6 envisages that at least one of the legislative decrees has to be adopted within a year of entry into force of the present law.

[xii] Cf. Morrone A.,2008.

[xiii] For further analysis and comments on the draft law following the amendments made to it by the Senate, see the final report on the workshop coordinates by Bilancia P. and held within the sphere of the "P.R.I.S." (Project for study on the processes of institutional reform and economic-social modernisation of the country), entitled "*Federalismo fiscale e sistema delle autonomie* (21 January 2009), the text is available on the website www.giuripol.unimi.it/pris/pris.htm.

[xiv] Reference is made to the special Parliamentary Commission set up by the present law, reference to which is made further on in this same paragraph.

[xv] See, in this sense,Groppi T., 2008.

[xvi] Cf. Bassanini F. and the Astrid group, 2008.

[xvii] Any "corrective" legislative decrees must be adopted within two years of the date of entry into force of the delegated decrees envisaged by the present law. It is worth pointing out that any additional and corrective legislative decrees will be adopted with the same procedures envisaged for the legislative decrees that will implement the act of delegation envisaged by law.

[xviii] The "Committee of representatives of the territorial autonomies" is made up of twelve members, appointed by the representatives of the Regions and Local Authorities within the context of the Unified Conference: six representing the Regions two the Provinces and four the Municipalities (art. 3, par. 4).

[xix] On the redefinition of the system of parliamentary opinions enacted by Parliament with regard to the original government draft law and on the role of the Parliamentary Commission for the implementation of fiscal federalism, see Salerno G. M. , 2009. The author positively assess the introduction of the Commission, because it enables Parliament to create a specialised observatory which allows it to exercise its monitoring of the Executive, for the creation of a link between the Commission and the local autonomies by setting up the Committee for Territorial Autonomies and for its connection with the other bodies created especially to pursue the process of reform.

[xx] Cf. Groppi T., *Il federalismo fiscale nel quadro costituzionale*, cit.

[xxi] For more information on the functions of the permanent conference for coordination of public finance and the Joint Committee for the implementation of fiscal federalism, see Salerno G. M., 2009.

[xxii] The Unified Conference is the body that links the Government, Regions and Local Authorities. Set up by Legislative Decree no. 281 of 28 August 1997, the Conference works to encourage cooperation between the activities of the Government and the system of autonomies, examining matters and tasks of shared interest. However, it should be pointed out that, on the basis of the provisions of art. 2, paragraph three of the law, the Government may also proceed in the absence of an agreement by the Unified Conference, forwarding a report to the Chamber indicating the reasons why the agreement has not been reached.

[xxiii] On the basis of that envisaged by art. 2, paragraph four of the law. It does not however seem possible to assume, on the basis of art. 76 Const., the adoption by Parliament of opinions which, as well as being obligatory are also binding during the phase in which the Government exercises the powers delegated.

[xxiv] On the standardisation criterion relating to the costs of functions see Covino F., 2009.

[xxv] See, on the matter, Bin R., 2008. The author criticises the fact that, by introducing standards to make directors responsible, the Government elects itself tutor of the financial rigour of the territorial bodies but not of its own, as its financial sovereignty remains intact. A correct "multilevel" government should be based, in the author's opinion, on the utmost transparency and truth of all the public financial statements, starting with that of the State and not, as actually happens, only the financial statements of decentralised governments.

[xxvi] Just to list a few examples, think of the recent government interventions to make up foe the health deficits of certain regions and deficits of two municipalities such as Catania and Rome. On the relationship that exists between fiscal federalism and the aim to improve the efficacy and efficiency of public services (especially in the south of Italy), see the attentive analyses carried out by Viesti G., 2009.

[xxvii] See, on the matter,Falcon G., 2008. In asking whether the sanctions applied to the Bodies will be sufficient, the author also asks: "*Can social rights depend on the good or bad management of the authorities elected?*". On a more general level, as regards the delicate issue of the relationship between fiscal federalism and the principle

of equality of citizens, see Gambino S., 2009.

[xxviii] On the presumed divergence of the model of the "three funds of compensation" created by the legislator in relation to the constitutional dictate which would rather contemplate a government fund for ordinary compensation, see Morrone A. cit.

[xxix] See paragraph 4.

[xxx] On the basis of the law, the taxes that have to cover expenditure for functions connected to "essential levels" and to the fundamental functions of the Local Authorities are those indicated in art. 7 par. 1 lett. b) number 1, the regional supplement to the IRPEF tax, part of VAT and IRAP tax until it is replaced by other regional taxes.

[xxxi] See, on the matter, the observations of Cerulli Irelli V., 2008. The author highlights the evident contrast with art. 119 Const. which guarantees complete financial coverage for all the functions exercised by the autonomies, not just for some, and mentions how the reference to the essential levels of services and fundamental functions appears to be completely lacking in content because, on one hand, the essential levels have still not been established, apart from in a few sectors, and, on the other, there is still no national law identifying the fundamental functions of the Local Authorities. Groppi T., 2009, cit., in highlighting the breech of art. 119 par. 4 Const., speaks of an unjustified distinction between "first class and second class functions". See also Della Cananea G – Fransoni G., cit, 2006. According to this reading, the constitutional law in question does not oblige the Government to "cover" all regional expenses, meaning that every level of government is responsible for obtaining the missing resources needed to perform all the functions assigned to it.

[xxxii] Attention should be paid to the considerations made further ahead in this same paragraph. In Italy there are five "Special Regions": Friuli Venezia Giulia, Sardegna, Sicilia, Trentino-Alto Adige, Valle d'Aosta. Constitution recognizes these Regions particular forms of autonomy (Art. 116 Const.).

[xxxiii] Art. 23 of the law contains transitory standards for the institution of Metropolitan Cities (envisaged by art. 114 Const.), until the approval of the specific law regulating its operation; art. 24 does the same for the transitory order of the territorial body of Rome Capital. Specific financial systems are envisaged for both the metropolitan cities and Rome Capital.

[xxxiv] On the matter, see Salerno G.M.., 2007. As regards the government draft law on fiscal federalism in relation to Special Regions, see Muraro G., 2009.

[xxxv] Par. 7 of art. 27 emphasise the need to ensure observance of the fundamental standards of the present law, but "respecting the particular features of each special region and each autonomous province"

[xxxvi] As emphasised by De Martin G. C., 2008, the question of the financial layout of the Special regions is a question which should not be overlooked in any way and it is important to guarantee the social-economic unity of the Republic. While believing that the special nature of these Regions can still be justified by an expansive vision of autonomy, the author highlights how this cannot translate into a system of financial privilege in contrast with art. 119 Const. According to Morrone A.,cit., the envisaged introduction of special principles to regulate the financial autonomy of the Special regions does not lead automatically to a systemic unitary consideration, but to prospects of increased fiscal and financial autonomy.

[xxxvii] On worries relating to the fact that all the tangible "ciphering" of the reform will take place outside of Parliament, see Manzella A., 2008.

[xxxviii] On the process of implementation of "administrative federalism" in Italy, see Cittadino C., 2003, (by), *Dal federalismo amministrativo all'attuazione del Titolo V della Costituzione: l'evoluzione di un sistema,* Sant'Arcangelo di Romagna, 2003.

[xxxix] Manzella A., 2009, envisages a transition time of seven years and highlights the extent of the power of attorney which now makes it substantially inconsistent: the author describes the text approved by Parliament as a "gambling law", considering it "*a gamble on the future and a high-risk gamble*".

[xl] Falcon G., 2008, cit., 767, critically emphasises the fact that the problem does not consist in the enunciation of these principles and criteria, but in their effective application.

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Italian Regions and Local Authorities within the framework of a new Autonomist System

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Abstract

The view prevailing among legal scholars - and endorsed in this paper - is that the coming into force of the reform of Title V, Part 2, of the Constitution introduced a multi-polar institutional framework in Italy, in which the various bodies making up the Republic are on an equal footing. Accordingly, this has made it necessary to re-consider the relationships between Regions and Local Authorities, which should rely on increasingly co-operative models. Regions are called upon to become policy-making bodies in charge of steering and planning activities for the respective territories. Given this scenario, the need is highlighted to introduce suitable decision-making, planning, and monitoring tools that can ensure an integrated system of governance. In particular, concerted action mechanisms should be implemented as regards the various entities concerned in order to determine the objectives, the procedures applying to Local Government, the responsibilities vested in the individual entities, and the co-operation mechanisms between Regions and Local Authorities. This is aimed at ensuring a certain degree of uniformity at regional level in a multi-tiered system that has to reconcile the requirements of differentiation resulting from the enhanced potential of locally autonomous bodies with the need to safeguard uniformity and consistency of the regional system.

Key-words:

Reform of Title V, Part 2, of the Constitution; Relationships between regions and Local Authorities; Local Governance.

1. The Organisation of Public Authorities Following the Reform of Title V, Part Two, of Italy's Constitution

The reform of Title V, part two, of Italy's Constitution as brought about by Constitutional Act no. 3/2001 introduced substantial innovations into the organisation of public authorities in Italy. The Act marked the shift from a centralised to a multi-polar (Olivetti 2001: 37 et seq.) system of institutions - whose main feature, to quote wording that has been amply used by scholars over the past few years, consists in its being multi-level in nature[I].

In this perspective, the role played by autonomies was especially highlighted in order to tangibly implement the relevant principle as set forth in Article 5 of Italy's Constitution.

This is unquestionably the direction in which the new wording of Article 114(1) of Italy's Constitution is going, since it reads as follows: "The Republic is comprised of Municipalities, Provinces, Metropolitan Cities, Regions, and the State."[II] The ultimate objective pursued by the lawmaker consisted in relinquishing the conventional pyramidal structure whereby the State was on top and shifting to a system where State, Regions, Provinces, Municipalities and Metropolitan Cities would be on an equal footing and jointly contribute to making up the Republic. The importance attached to autonomies was enhanced by building up a new institutional framework. Public authority was re-adjusted in accordance with a bottom-up approach - starting from the local level, which is closer to citizens, and going up the ladder to reach the levels of government covering the largest areas (Pastori 2001: 217 et seq.).[III] This allowed increasing the visibility of the bodies that deal with the smallest areas and are closest to citizens: the Municipalities. All the bodies at the various levels were afforded thereby equal standing, which did away with the differences between Regions and Local Authorities that most scholars had construed to be grounded in Articles 115 and 128 of Italy's Constitution[IV], respectively - whereby Local Authorities were traditionally considered to be subordinate to the State and, partly, to Regions.[V]

The foundations were laid to move from the pyramidal concept of the various levels of government towards a horizontal, integrated concept of the relationships between

such levels. This entailed a shift from a system featuring multiple institutions to a system featuring what scholars termed "equalised institutional pluralism"[VI] - since the individual entities making up the Republic are on an equal footing and are recognised to have "the same institutional dignity, although the respective competences may differ" (Rolla 2004: 633; Piraino 2006) We share the view whereby this equalization pattern may not be challenged by paragraph 2 of Article 114 of the Constitution either, which provides that Municipalities, Provinces, Metropolitan Cities and Regions shall be "autonomous bodies with regulations, powers and functions of their own in accordance with principles set forth in the Constitution." In fact, this provision introduced a distinction between Regions, Provinces, Metropolitan Cities and Municipalities, on the one hand, and the State on the other hand - since the State is not included in the list of Article 114(2). Although the State is a component part of the Republic just like the entities below State level, it is the only holder of sovereign powers; all the remaining entities may only be considered to be autonomous as for their status.[VII]

It is accordingly impossible to view any entity, including the State, as placed above the remaining ones (Cammelli 2001a).

This multi-level institutional system was mirrored by several provisions introduced into the regulatory framework.

Article 117 of Italy's Constitution provides that the law-making power vested in Regions is of a general as well as residual nature, whilst that vested in the State is specific; additionally, a distinction is drawn between exclusive and concurrent law-making power. The former is reserved for the State via a list of subject matters contained in paragraph 2 of Article 117; the latter applies to Regions pursuant to a list of subject matters contained in paragraph 3 of Article 117 and in compliance with the fundamental principles set forth by the State. Finally, paragraph 4 of Article 117 provides that Regions have exclusive (or "residual") law-making powers in any area that does not fall under the scope of the State's exclusive and/or concurrent law-making powers. With regard to such areas, Regions have primary law-making powers, which are not limited by the fundamental principles set forth in the State's laws even though they must be exercised "in compliance with the Constitution and the constraints arising out of Community law and international obligations."[VIII]

The State's power to issue regulations (i.e. secondary legislation) was also downsized and limited to such matters as fall under the State's exclusive competence - subject to delegation of powers to the Regions.[IX]

As for the relationships between Regions and Local Authorities, paragraph 2, letter p., of Article 117 provides that State laws may only regulate the following matters: "electoral laws, governing bodies, and fundamental functions applying to Municipalities, Provinces, and Metropolitan Cities" - whereby it is implicitly acknowledged that Regional laws may step in with regard to any areas that do not fall under the scope of the State's competence and/or the regulatory powers vested in the said Local Authorities.

Based on Article 118 of Italy's Constitution, administrative powers are conferred in general on Municipalities "except that they may be conferred on Provinces, Metropolitan Cities, Regions and the State in order to ensure that they are exercised uniformly on the basis of the subsidiarity, differentiation, and adequacy principles."[X]

Thus, the constitutional reform has changed the roles played by the bodies making up the Republic. There is no longer any general law-making and administrative competence vested in the State, as the law-making powers of Regions have been expanded, on the one hand, and general regulatory and administrative powers have been conferred, in principle, on the bodies below the State level.

The equalisation principle was also tangibly implemented via the repeal of Articles 124, 125(1) and 130 of Italy's Constitution, which regulated Government Commissaries and the supervision over the administrative activities of Regions and Local Authorities, respectively. This type of supervision made sense in a system where the various institutions were ranked hierarchically, whilst it could no longer be retained in the new constitutional framework - which is grounded, as already pointed out, in the equality of the individual components.

However, new provisions were introduced in the Constitution to regulate the possibility for the executive to step in the place of Regions and Local Authorities in especially serious instances of "non-compliance with international rules and treaties or Community laws, or serious danger to public safety and integrity, or whenever this proves necessary to safeguard legal and/or economic unity with particular regard to the essential levels of civil and social rights"; in any case, "the procedures aimed at ensuring that such substitution powers are exercised in compliance with subsidiarity and fair co-operation

principles" must be set forth by law (Marchetti 2005: Musselli, 2009).[XI] The above provisions can impact on the relationships between Regions and Local Authorities. In line with the concept whereby this reform has given rise to a multi-polar system which requires connecting links and concertation mechanisms between the various levels (Cammelli 2001b; Pizzetti 2001). we believe therefore that the substitution powers in question should work as a key connecting factor.

As part of this new constitutional framework, the co-operation mechanisms between the various components have been strengthened. Special importance should be attached in this regard to Article 123, last paragraph, of Italy's Constitution, whereby the Council of Local Autonomies (Consiglio delle autonomie locali) - which is the forum for consultation between Regions and Local Authorities - is to be regulated via regional statutes. This provision is meant to foster relationships between central and peripheral levels that are grounded in the direct relationship between Regions and sub-regional bodies - quite a long way from the conventional concept according to which the State was the sole counterpart of Local Authorities.[XII] In this regard, suffice it to mention that the drafters of Italy's Constitution in 1948 had not made a clear-cut decision as for the relationships between Regions and Local Authorities. Under Articles 118(1) and 128 previously in force, State laws were supposed to allocate functions to the various institutional levels in accordance with basically homogeneous standards. However, regional laws were expected to reduce this homogeneous regulation of local functions by entrusting Local Authorities - under Article 118(3) as previously in force - with the discharge of functions that the State law had already classed as regional in nature. Given this framework, the State has long countered the regionalization of the competences vested in Local Authorities,[XIII] by keeping separate relationships with Regions, on the one hand, and with sub-regional bodies on the other hand - as well as by reforming the system of local autonomies via regulations and legislation issued at central level[XIV] On the other hand, Local Authorities have never especially trusted Regions; being afraid of the "regional centralism", they have opted for requesting the State to provide them with increased autonomy from and protection against Regions. Thus, the State has implemented reforms over the years that were meant to meet widely different requirements. On the one hand, the reform of Regions in the 1970's enhanced Regions' administrative role whilst playing down their law-making, planning and co-ordination powers vis-à-vis Local Authorities - which in some cases resulted into

reducing the scope of Local Authorities' autonomy. On the other hand, the reform of Local Authorities brought about in the 1990's was aimed at defending their autonomy from Regions.

Finally, the principle of institutional pluralism is implemented via the constitutional rules that attach greater importance to Local Authorities - by affording full independence to Municipalities, Provinces, and Metropolitan Cities in drafting their by-laws;[XV] conferring regulatory powers on the said bodies as for the organisation and performance of the respective functions;[XVI] affording financial independence as for revenues and expenditures to Local Authorities;[XVII] enabling the latter to rely on autonomous financial sources, introduce and levy taxes and duties of their own, and obtain part of the State revenues pertaining to the respective territories.[XVIII]

2. The New Role of Regions under the Constitution

The 2001 Constitutional Reform mirrors both the "autonomist" stance - whereby Regions and Local Authorities are placed on an equal footing in terms of their constitutional status - and the "regionalist" stance. The latter can actually be descried in several instruments that have been briefly described above; they confer a leading role on Regions in reshaping the institutional, organizational and financial framework of regional and Local Authorities.

2.1. ....As for the Allocation of Administrative Functions

Regions have been given increased powers in the allocation process of administrative functions. The constitutional reform has outlined a highly flexible administrative model; without prejudice to the general principle that such functions lie with Municipalities whenever they are not to be conferred on higher-level administrative bodies to ensure that they are exercised uniformly in pursuance of subsidiarity, differentiation and adequacy principles,[XIX] administrative functions may be discharged by each body. That is, each level of the administration may discharge administrative functions since none of them has exclusive administrative competence under the Constitution. The general principle

whereby such functions are to be allocated to Municipalities may be derogated from at any time in order to ensure that those functions are exercised uniformly.

It should be recalled in this connection that it had been questioned in the past that Article 128 of the Constitution as previously in force empowered Regions to pass legislation on the allocation of administrative functions. Only after the enactment of Act no. 142/1990 (Local Government Act) and, above all, Act no. 59/1997 (the so-called "Bassanini law") and legislative decree no. 112/1998 (which enacted law no. 59/1997) were Regions given significant powers in determining the administrative framework - foreshadowing, in a sense, the constitutional reform of 2001. Conversely, the new wording of Article 118 provides for both the State and Regions to be empowered to pass legislation on the allocation of administrative functions. Both may step in, within the sphere of the respective competence, to allocate administrative functions by taking account of the need for uniformity so as to allocate those functions to entities other than Municipalities - in compliance with the subsidiarity, differentiation and adequacy principles. Whilst administrative functions in general fall to Municipalities, the State should determine the fundamental functions applying to Municipalities, Provinces and Metropolitan Cities[XX] and possibly confer additional functions on the said bodies as for the matters falling under the State's scope of competence. Conversely, Regions are empowered to confer additional functions on Local Authorities as for those matters that fall within the Regions' scope of competence.

It should be pointed out in this connection that the Constitutional Court has construed the provisions in question restrictively, even though it does not consider any longer that the "functions" of Municipalities and Provinces in general should be determined by State laws or that the latter should allocate "exclusively local functions" to Municipalities and Provinces as for the matters falling within the regions' scope of competence - contrary to what was the case in pursuance of Articles 128 and 118(1) of Title VI as previously in force.[XXI] Indeed, the Constitutional Court has developed the principle of "upward" subsidiarity starting from its decision no. 303/2003, whereby the allocation of administrative functions to the State "follows" the passing of legislation - by way of derogation from the allocation of law-making powers set forth in the Constitution.[XXII]

Nor should one forget that the subsidiarity principle - which could be expected to entail the re-allocation of functions in pursuance of the administrative model outlined above - has not yet been implemented in full. There are as yet no regulations in place to determine and allocate the fundamental functions applying to Municipalities, Provinces and Metropolitan Cities or to adjust the provisions concerning Local Authorities in the light of the overall reform.[XXIII]

Indeed, the determination of the fundamental functions applying to Local Authorities should have been a key step in implementing the constitutional reform, as it would have allowed setting the resources to be allocated to the individual government levels more precisely. Conversely, the reform in question is being implemented starting from the so-called fiscal federalism. Act no. 42 dated 5 May 2009 ("An Act enabling the Government in respect of fiscal federalism pursuant to Article 119 of the Constitution") sets forth what will have to be funded by which taxes, without first clarifying the functions to be discharged by the individual bodies.[XXIV] This Act sets forth the functions of Local Authorities only on a provisional basis and exclusively for the purposes of its implementation - as it only draws a distinction between fundamental and non-fundamental functions.[XXV] Transitional rules are also laid down on the setting up of Metropolitan Cities[XXVI] including the fundamental functions the latter bodies should discharge.[XXVII]

The Council of Ministers also adopted - at its meeting of 19 November 2009 - a draft decree containing "Identification of the fundamental functions of Provinces and Municipalities, simplification of the Regional and Local Legal system, delegation to the Government on the transfer of administrative functions, Charter of the Autonomies, streamlining of the Provinces and Local Government. Reordering of decentralized agencies and bodies". The time gap between passing of the Act to implement Article 119 of the Constitution and the adoption of the draft decree that is meant to adjust the legislation on Local Authorities to the new text of Italy's Constitution shows quite clearly that the reform process is not being tackled systematically. Conversely, this process should have followed a more streamlined approach and aimed not only at upgrading the Consolidated Statute on Local Authorities, but at the full-fledged implementation of the new constitutional rules.

2.2. ... As for the Regulations Applying to Local Authorities

The Constitution does not provide any clear-cut guidance concerning the legislative competence for the regulations applying to local authorities, as it only provides that State laws must regulate "electoral matters, governing bodies, and the fundamental functions of Provinces, Regions, and Metropolitan Cities."[XXVIII] Although it is far from easy to clarify the scope of the legislation in question, it can be argued that the latter should only apply to the regulatory components that are expressly referred to without including other components, which should accordingly fall under the Regions' scope of competence. As well as being no longer subject to the State's law-making powers, the regulations applying to Local Authorities are therefore no longer liable to uniform approaches.

Still, one should draw a distinction between the different aspects making up the legislation Regions are called upon to enact in regulating local authorities, since the lawmaker is required to abide by different constraints depending on the aspects at issue (Rolla 2002: 336).

As for the organisation and discharge of the functions allocated to local authorities, it can be argued that the State has no exclusive law-making powers except obviously for the legislation determining the governing bodies of Provinces and Municipalities. One the one hand, Local Authorities are entrusted with regulatory powers as for the organisation and discharge of their functions;[XXIX] on the other hand, the State has exclusive law-making powers as for the organisation of administrative functions only with regard to State bodies.[XXX] By reading the Constitution in a global perspective and taking account that the legal basis requirement set forth in Article 97 is not absolute whilst it can be ruled out that the State's powers cover such matters, one might wonder what relationship features between, on the one hand, regional laws and regulations and, on the other hand, local regulations as for the matters at issue (Di Folco, 2007; Tosi 2002). In this connection, it should be recalled that the Constitutional Court has ruled that Local Authorities have reserved regulatory powers vis-à-vis regional regulations, whilst this not the case with regard to regional laws. This means that regional laws may step in, if this is found to be necessary on specific grounds, to ensure that local functions are discharged uniformly; conversely, regional regulations may not encroach on the regulatory powers of local

authorities, not even on a supplementary basis. [XXXI] The regulatory powers vested in Local Authorities as for the "organisation" of the functions allocated to such authorities should therefore apply to all the relevant components - except for the regulations concerning the respective governing bodies, which are subject to the State's exclusive law-making powers as already pointed out, as well as for the determination via the regional law of the principles applying to the organisation of local functions, whenever this is justified by the need to ensure uniformity. As for the "performance" of the functions in question, the regional law might step in to allocate administrative functions so as to ensure a co-ordinated stance; again, this would be limited to only setting forth the relevant principles, without taking up the room reserved for the decision-making of local authorities.

Furthermore, it can be reasonably argued that Regions have competence over regulating the organisation of functions at supra-municipal and/or supra-provincial level along with the forms of partnership among Local Authorities (Pantani 2000) - which might prove necessary in a few cases to allow discharge of the said functions. Indeed, Italian law allowed for the creation of partnership forms: joint management of functions (*esercizio associato di funzioni*, does not give birth to a new local body); Association of Municipalities (*Unione di Comuni*, an aggregation model of two or more neighbouring Municipalities); Merger of Municipalities (*Fusione di Comuni*, is a new local body); Mountain Community (*Comunità montana*, aggregation between Municipalities in mountain areas). It should be recalled in this connection that the implementation of the new administrative system is bound to rely on the enforcement of partnerships among Local Authorities (Bracci 2003; La Torre 2006). Small or very small Municipalities, at times devoid of the necessary financial, organisational, human and instrumental resources to discharge their administrative functions both effectively and efficiently, need to build partnerships in order to provide services (Cerulli Irelli 2004). This can only be made possible by the genuine willingness of the authorities concerned to overcome long-standing rivalries and undertake more streamlined management experiences.

Another law-making area that can be argued to fall exclusively to Regions has to do with the regulations applying to the bodies that are not considered to be autonomous under the Constitution - such as Mountain Community - including the power to set up and/or dismantle them. Indeed, the Constitutional court has repeatedly emphasized that Regions are competent for issuing legislation on the organisation and functions applying

not only to Mountain Community, but also to other forms of partnership among Local Authorities.[XXXII] From this standpoint, one might argue that every Region should define partnership forms and the promotion tools (benefits, contributions, transfers, tax relief). Additionally, Regions should regard the forms of partnership among Local Authorities in the broader perspective of institutional simplification - the ultimate objective being to ensure that a single body can discharge the functions that were previously distributed among several entities.[XXXIII]

The regional competence over the regulations applying to Local Authorities can be argued to include the regulations on the assessment mechanisms for such authorities. Far from envisaging the possibility for Regions to re-introduce the traditional control mechanisms on Local Authorities, which have been repealed by the reform, this is meant to point to the possibility of bringing about new types of assessment as an alternative to the conventional ones; these new mechanisms should rely on the co-operation between the bodies concerned without encroaching upon the prerogatives of lower-level bodies. The implementation of the new administrative system would appear to be related to the need for envisaging an innovative system to verify the actual discharge of the functions allocated to the given body also in terms of effectiveness and efficiency (Merloni 2006). The verification should concern two features inherent in discharging the functions in question - namely, whether the resources required to discharge them were managed appropriately, and whether the expected outcome could be achieved by discharging those functions. This would result into making the bodies in charge of administrative functions more accountable, partly because of the increasing constraints placed on public financing. The ultimate consequence of the verifications in question should consist in the Region's re-allocating the given function to another body that can rely on the appropriate human, financial, and organisational resources.

On the other hand, the need for Regions to provide for mechanisms aimed at verifying the discharge of administrative functions by Local Authorities in terms of their adequacy is closely related to the power vested in Regions to step in on a subsidiarity basis. The Constitutional court recognised - starting from its decisions no. 313/2003 and 43/2004[XXXIV] and continuing consistently with its subsequent case law[XXXV] - that Regions may legitimately substitute for local authorities; however, the Court pointed out that

suitable procedural safeguards were to be laid down in pursuance of the principle whereby Regions and Local Authorities should co-operate fairly.

Finally, one should not fail to consider that the case law of the Constitutional court has construed the relevant provisions somewhat restrictively as also related to the regulations applying to local authorities. On several occasions the Court has re-affirmed the key role played by lawmakers and the legality principle - not only with regard to the re-allocation of administrative functions[XXXVI], but also in regulating the discharge of such functions.[XXXVII]

2.3. ... As for the Regulations Applying to the Autonomous Resources and the Levying of Taxes by Local Authorities, the Regional Co-ordination of Public Spending, and the Equalization of Financial Apportionment within each Region

The reform of Italy's Constitution has provided Local Authorities with financial autonomy as for revenues and expenditures, which was only applicable to Regions in the past; additionally, it has allowed Regions and Local Authorities to own assets and levy taxes of their own, whilst this power will have to be in compliance with the Constitution and respect the principles of co-ordinated public spending and the fiscal system.[XXXVIII] Additionally, both Regions and Local Authorities are entitled to partake of the State revenue arising out of the respective territories.[XXXIX]

It is therefore appropriate to clarify which areas fall under the State's exclusive law-making powers compared to those that fall within the scope of concurrent legislation as for determining local own taxes and the partaking of the State revenue. Under Article 117(2), letter e., exclusive law-making powers apply to the "State's revenue and accounting system" and the "equalization of financial resources". Regions have concurrent law-making powers with regard to the "harmonization of public budget and co-ordination of public expenditure and the fiscal system" (Article 117(3)).

The aforementioned constitutional provisions should be construed jointly with Article 23 of the Constitution, which requires any income and/or personal tax to be grounded in law.

Faced with the non-application of Article 119 of the Constitution, the Constitutional Court has repeatedly clarified the scope of the relevant provisions and their consequences. The Court has outlined the markedly unificatory role played by the State also in respect of financial autonomy, so as to ensure that a unified reference framework can be available. The State has not only to lay down the principles to be complied with by Regional law-makers, but also to set the major features of the fiscal system as a whole and determine the boundaries that apply to the taxation powers vested in the State, Regions, and local authorities, respectively.[XL] Failing provisions that implement Article 119 of the Constitution, it is not to be permitted that individual Regions and/or local authorities[XLI] may issue separate regulations; accordingly, it is not possible to determine the taxes to be levied by Local Authorities on their own as "they may be regulated by regional laws and local regulations in compliance with co-ordination principles."[XLII] The Court has also clarified that, given the principle whereby any income and/or personal tax must be grounded in the law as per Article 23 of the Constitution and since no law-making powers are vested in local authorities, local taxes must be regulated by way of a multi-tiered system of legislation - namely, via the regulatory powers vested in Local Authorities and, on the other hand, via State and regional laws, which make up the upper tier of the regulations applying to local taxes.[XLIII] The regulatory framework applying to local taxes is therefore taking shape as either a three-tiered system (State legislation, Regional legislation, and local regulations) or a two-tiered system (State legislation and local regulations, or else Regional legislation and local regulations). [XLIV] However, Regional laws must comply with the fundamental principles of co-ordination of the fiscal system as set forth in "framework" State laws and/or resulting from the legal system.[XLV]

Although the Constitutional Court has provided an extensive interpretation of the State's power to co-ordinate public finance, it is unquestionable that Regions are bound to play a leading role vis-à-vis Local Authorities in the presence of State legislation applying to these matters. This will be the case as for co-ordinating the financial mechanisms of Local Authorities and harmonising their budget; regulating local authorities' own resources and taxes in compliance with the autonomous decision-making powers vested in Local Authorities as for taxation; the partaking in regional taxes; and equalizing financial resources within the given Region. The concurrent competence vested in Regions as for the co-ordination of public finance and the fiscal system has strengthened their powers to

co-ordinate regional and local finance. Regional legislation is a source of regulation, just like State legislation, with a view to the introduction of taxes by local authorities; conversely, the latter are empowered to decide whether such taxes should be introduced or not and lay down more detailed regulations with particular regard to the applicable rates and the taxable amount. As for the equalization of taxes, it can be ruled out that Regions may regulate, via their legislation, the equalization fund referred to in Article 119(3) of the Constitution; the latter provides expressly that the fund may only be set up "by State law".[XLVI] Additionally, the "equalization of financial resources" falls within the scope of the State's exclusive competence.[XLVII] However, this does not mean that Regions may not play any role in connection with equalization; in fact, Regions should regulate the taxes levied directly by Local Authorities and the partaking by the latter in the relevant revenues so as to bring about equalization and do away with any unbalances as for fiscal revenues within the given Region (Giarda 2001: 1468).

Another major principle was introduced into the Constitution, whereby the resources of non-State bodies - whether resulting from the levying of own taxes or from the partaking in the State revenue - must allow "financing the public functions allocated to them in full." [XLVIII] This would appear to support the concept that the survey of the functions allocated to the various levels of government should have preceded the assessment of the resources required to discharge such functions. It has already been pointed out that the route followed by Parliament goes actually in the opposite direction. Whilst the Constitution shows that the resources of Regions and Local Authorities should be enough to fully finance "all" the public functions allocated to them, the fiscal federalism legislation draws a distinction between two types of function - namely, the Regional functions that relate to fundamental requirements in connection with civil and social rights and the fundamental functions vested in local authorities, on the one hand, and all the remaining regional and local functions on the other hand. Only with regard to the former is the full coverage of "standard costs" envisaged, as opposed to the "historical expenditure" criterion that was used in the past, whilst the costs related to the latter functions are covered only in part.

For the purposes of this paper one should briefly dwell on the relationships between Regions and Local Authorities as for fiscal matters, which have been set forth in the recently enacted legislation on fiscal federalism. On the one hand, this legislation would

appear to confer important functions on Regions, which have been allowed to introduce local and regional taxes and determine the respective rates and/or the allowances local authorities may apply in pursuance of their autonomous decision-making powers;[XLIX] to introduce the possibility for local authorities to partake in the revenues from regional taxes and the quotas allocated to regions;[L] to set up two equalization funds of which one would be intended for Municipalities and the other one for Provinces and Metropolitan Cities, which are financed by the State but allocated to Local Authorities by Regions in accordance with criteria that are set forth via State legislation and may be modified up to a certain extent in accordance with specific procedures.[LI] On the other hand, the financial relationships between the various bodies would not appear to have been outlined in a sufficiently clear-cut manner. No adequate regional co-ordination mechanisms have been provided for with regard to the fiscal and financial system applying to local authorities. The boundaries of the regional law-making powers have not been determined accurately as for the introduction of local taxes, (Carinci 2008; Groppi 2008) nor has the extent of the Regions' autonomy been defined precisely as for the taxes devolved to them and their power to directly manage the equalization funds that are fed to the Local Authorities in the respective territories.

Pending the implementation of the law on fiscal federalism,[LII] on the one hand, and the determination of the fundamental functions along with the adoption of the "Charter of Autonomies", on the other hand, the implementing process of the whole constitutional reform has currently come to a standstill.

3. The Fair Co-operation Principle in the Relationships between Regions and Local Authorities and the Need for Governance Tools

The Constitutional reform has made it necessary to reconsider not only the role played by Regions and their organizational structure, but also the relationships between Regions and local authorities. One the one hand, the foundations have been laid, generally speaking, for relinquishing the traditional hierarchical separation framework applying to the relationships between the various levels of government, which has been superseded by a framework featuring the enhanced integration of such levels. In a multi-polar, equalitarian

system of institutions, all the non-State institutions should be on an equal footing and called upon to participate in the decision-making process of the higher levels. On the other hand, it is exactly the new allocation of law-making, administrative and regulatory powers to State, Regions and Local Authorities that requires suitable governance tools to be introduced for the whole system in order to ensure veritable negotiating mechanisms between the various levels of government.[LIII] Regions will have to act increasingly as bodies in charge of governance, defining strategic policies and planning and control mechanisms for their respective territories. Indeed, the new administrative system should entail a reduction in the administrative functions that are discharged directly by Regions, which functions should be allocated, as a rule, to lower-level bodies.

Having said this, one cannot question that the steering function to be discharged by Regions with regard to the system of local autonomies (Merloni 2006) can only be made possible by re-defining the relationships between State and local autonomies as well as between local autonomies, on the one hand, and by adopting more suitable collaboration tools. The new constitutional model of administrative governance can only work if Regions undertake to make enhanced use of harmonization tools in respect of Local Authorities - i.e. by way of agreements, covenants, formal and informal agreement procedures, joint and negotiated administration mechanisms. The relationships between Regions and Local Authorities should rely ultimately on a sort of equalitarian pluralism grounded in new decision-making, planning and control mechanisms that can bring about an integrated government system.

Therefore, the new framework of public authorities should be grounded not only in the subsidiarity principle, but also in fair co-operation. Implementing the fair co-operation principle in the relationships between the various levels of government allows - in our view - implementing an efficient, democratic governance system at regional level.[LIV] One should not fail to consider in this regard that the Constitutional Court had initially worked out the fair co-operation principle only for the State-Regions relationships, whilst it subsequently reaffirmed the need for applying this principle to the relationships between Regions and Local Authorities as well.[LV]

Only by way of the tangible application of the fair co-operation principle [LVI] will it be possible to reconcile the principles of autonomy, differentiation, and subsidiarity[LVII] - which are aimed to allocate functions as a rule to the level that is closest to citizens - with

the unified framework of the Republic. This principle proves necessary in a multi-polar system in order to prevent excessive differentiation from breaking down the unity of the system as a whole - or else to prevent the need for uniformity and unification from making the new constitutional provisions devoid of tangible effects. Additionally, the increased co-operation of the entities at issue would prevent centralist and neo-regionalist views from taking root, which views would not be in line with the rationale underlying the Constitution - i.e. the valorization of Local Authorities. The participation of lower-level bodies in the regional decision-making process would also be instrumental in reducing confrontational stances - by expediting the implementation of constitutional reform and reducing litigation before the Constitutional Court - and in enhancing accountability of the bodies concerned when implementing the respective policies within their own spheres of competence.

4. The Regional Decision-Making Processes That Require Regions and Local Authorities to Co-Operate

It is high time to dwell more specifically on the areas where the enhanced integration between Regions and Local Authorities would appear to be appropriate.
One first area of co-operation between the entities in question should concern the various regional decision-making processes that have repercussions on lower levels of government. By the same token, the integration of the various levels of government should play a key role also at a later stage, i.e. following the taking of a joint decision, when the focus should be on verifying the activities performed by Local Authorities and possibly substituting for them.

In this connection, it can be reasonably argued that the degree of participation by Local Authorities in Regional decision-making should be made dependent on the impact of such decisions at local level - that is, the greater the impact of a Regional decision is on local competences, the stronger the co-operation between the entities concerned should be. Accordingly, especially strong co-operation mechanisms should be in place with regard to the exercise of law-making functions that concern Local Authorities as for planning, co-ordination and active management, which are more liable to impact on local policies. As regards any control functions to be discharged by Regions and/or the Regions' power to

substitute for local authorities, one might argue conversely that adequate procedural safeguards may be enough such as to enable the body under scrutiny and/or substituted for to voice the respective concerns vis-à-vis the higher-level body - without getting as far as envisaging "strong" agreements that might deprive Regions of any real powers.

4.1. Drafting and Approval of Regional Laws

Several regional laws impact on local authorities; accordingly, they require the involvement of the latter authorities in their drafting and adoption processes.

a. ... Concerning the Allocation of Administrative Functions to Local Authorities

The recognition of the key role played by Regions in the allocation of administrative functions should go hand in hand with co-operation mechanisms, agreements and covenants with local authorities. If the allocation of administrative functions requires careful assessment of the interests at stake - both regional and local - in order to determine what level of government is best suited to fulfil such interests, it is unquestionable that the relevant decisions should be agreed upon by all the entities involved (Gentilini 2003: 929 et seq.; Urbani 2003: 464 et seq.) In particular, it is necessary to co-operate with Municipalities so as to evaluate the functions they may discharge or not, whilst co-operation with other Local Authorities is required to decide on the most appropriate allocation of such functions. This would actually appear to be indispensable to protect Local Authorities against the danger resulting from the regional attempt to retain those functions that allegedly require unified approaches at regional level on account of merely political considerations.

b... Concerning the Organisational Framework of Local Authorities

Enhanced co-operation would appear to be also necessary between Regions and sub-regional bodies in connection with the approval of regional laws that regulate the

organisational framework of local authorities, whenever such regulations are believed to fall within a region's scope of competence.

b1. ...Concerning the Principles Underlying the Organisation of Regional and Local Administrative Activities

As already pointed out, the fact that Regions have been afforded especially wide-ranging, incisive regulatory powers does not mean in any way that Regions should prevail over local authorities. Prior to adopting any laws that regulate regional administration and, on the other hand, lay down the principles applying to the local organisation and the co-ordinated discharge of functions, Regions should consult with Local Authorities and/or take concerted action to the greatest possible extent. The co-operation between the bodies in question is actually necessary to allow harmonization between regional legislation and the regulations Local Authorities are expected to issue so as to detail the organisation and performance of the functions allocated to them.

b.2. ... Concerning the Discharge and Organisation of Local Administrative Functions

In allocating additional functions to Local Authorities on top of the fundamental ones set forth via State laws, Regions should follow different approaches. This differentiation should result from a carefully balanced analysis and take also account of the adequacy principle and - accordingly - of the possibility to foster partnership among Local Authorities in view of discharging the said functions. Again, it is necessary to develop co-operation mechanisms between Regions and local authorities. Regions will have to undertake to tangibly implement the subsidiarity principle, and therefore reduce the scope of the functions they discharge; Local Authorities will have to be consulted in respect of these matters so as to jointly determine whether a given local authority can appropriately discharge a certain function or it is preferable to foster partnership among Local Authorities (Meloni 2007).

In fact, the principle that the entities in question should co-operate in order to regulate joint management of functions was also set forth in the former section 33 of legislative decree no. 267/2000 (Maggiora 2000). The latter provides that Regions should foster the joint management of functions and also determine the top level of performance for such functions via tools and procedures grounded in agreements and networking. Additionally, Regions are required to agree with Municipalities, in the appropriate forums, on a programme to determine the scope of the joint management of functions and services at supra-municipal level; they should also introduce incentives to achieve joint management of functions by Municipalities within the framework of the aforementioned programme.

c. ... Concerning the Determination of the Overall Objectives to Be Pursued in Discharging the Allocated Functions

The Regional law setting forth the overall objectives to be pursued in discharging the functions allocated to Local Authorities should respect the regulatory autonomy vested in the latter authorities as for the organisation and performance of the said functions; further, it should be approved by involving the authorities concerned. It is actually unquestionable that the objectives at issue impact considerably on the relevant area and should be agreed upon jointly with the authorities that are called upon to discharge administrative functions in practice.

d. ... Regulating Local Authorities' Own Resources and Taxes, Coordinating Public Finance at Regional Level, and Ensuring Equalization of Funding at Regional Level

The taxation powers allocated to all Regional and Local Authorities make it necessary to implement collaboration and co-ordination mechanisms to ensure that the public financial system is shaped consistently.
In the first place, the Constitutional requirement that the "co-ordination of public finance" be regulated via concurrent legislation entails, by necessity, the co-operation between State and regional law-makers in enacting the relevant legislation. This legislation should be the

outcome of as shared decision-making processes as possible, involving all levels of government. By the same token, the regional legislation detailing the co-ordination of regional and local financial systems and harmonizing the budgetary resources of Regions and Local Authorities should be enacted on the basis of "concerted" decisions involving the said bodies. This is aimed at ensuring a unified financial system and preventing, at the same time, the taxation powers vested in Local Authorities from being downsized excessively.

4.2. The Drafting of Regional Policies and Planning and Co-ordination Schemes

The new steering role conferred on Regions as for the governance of Local Authorities is bound to further highlight the importance of the functions Regions should discharge in terms of monitoring, policy-making, planning and co-ordination. The latter functions are actually closely related to the other functions pertaining to regions - i.e. the administrative and legislative ones. Regional legislation contains the principles to be followed in discharging the functions of verification, planning and co-ordination allocated to Regions; such functions are translated tangibly into the administrative activities performed by Regions. The steering and planning role applying to Regions is also closely related to the administrative functions discharged by Local Authorities with a view to fostering the development of the respective communities. In other words, the policies and plans developed at regional level should take account of the development of the Region as a whole; however, they should also meet the requirements coming from local communities. Accordingly, it is fundamental that there should be unrelenting integration and interaction between Regions and sub-regional bodies when determining regional policies and plans - which activity is aimed obviously at fostering development in fundamental areas of citizens' life.[LVIII] An effective planning activity should fulfil both the unified interests vested in the Regional community and the more specific interests vested in Municipalities and Provinces. Therefore, we believe that Regions - being no longer called upon to directly discharge several administrative functions - are required in the first place to lay down the objectives to be pursued and shape their own policies in collaboration with local authorities.

4.3. The Decisions Concerning the Mechanisms for Supervision and Substitution Vis-à-Vis Local Authorities

Following the elimination of traditional controls, one should consider "new mechanisms for supervision" in order to ensure a minimum level of uniformity at regional level and prevent the functions allocated to Local Authorities from remaining dead letter. In other words, each Region will have to monitor ex post whether the administrative functions conferred on Local Authorities are being discharged in accordance with cost-effectiveness, efficacy, and effectiveness principles. In a multi-polar system it is necessary to devise new mechanisms for supervision that should be grounded in the collaboration between the different levels of government.

5. Considerations on the Co-Operation Tools Introduced by Regions

A precondition to implement a system that features multiple levels of government on an equal footing consists in streamlining the tools and mechanisms to achieve the co-operation between Regions and local authorities.

In the past Regions limited themselves basically to seeking the involvement of Local Authorities by asking for their opinions, which were not binding; however, a system that relies on the genuine collaboration between government bodies is bound to result into concerted decision-making mechanisms.

It is indispensable that tools be implemented to achieve the integration of sub-State bodies so as to ensure a certain degree of uniformity at Regional level and also fully benefit from the experiences of local authorities.

Given this new scenario, an effort was recently made to regulate the co-operation between Regions and sub-regional bodies. Reference can only be made here to the fact that Regions have basically introduced two mechanisms for Local Authorities to participate in their decision-making processes. On the one hand, Local Authorities have been empowered to step in within the framework of regional decision-making processes, including law-making activities, via permanent forums involving Regions and Local

Authorities - e.g. the Council of Local Autonomies referred to in Article 123, last paragraph, of the Constitution, or else the Multi-Stakeholder Conferences held by local authorities. On the other hand, procedural mechanisms have been developed to ensure consultation and co-ordination within the framework of the decision-making processes applying to certain policies and/or individual instruments, which are unrelated to the establishment of specific institutional forums; this applies, for instance, to the procedural mechanisms aimed at taking concerted decisions, which are typical of the public administration and consist in multi-stakeholder conferences and/or policy agreements. More or less informal consultation mechanisms have also been tested, featuring increased flexibility so as to expeditiously attain concerted decisions - see, for instance, the consultation/co-ordination conferences in which associations representing local authorities, Union of Italian Provinces (Unione delle Province d'Italia - UPI) and National Association of Italian Municipalities (Associazione Nazionale Comuni Italiani - ANCI), representatives from individual Municipalities and Provinces, etc. are invited to participate. In this connection, it should be pointed out that the said mechanisms might prove especially helpful to reconcile uniformity with multifariousness as well as the need to collaborate with the need to expedite decision-making.

However, one cannot but remark, to conclude, that the tools for concerted action described above will not allow averting the dangers that may arise if one or more levels of government are against to the specific decision. It is therefore fundamental for the individual entities that participate in decision-making processes to make a veritable effort in order to come to an agreement.

Regions have been provided with major powers in view of ensuring the development of the respective territories; they will have to act as co-ordinators for the various levels of government without prevailing over sub-regional bodies - as this would result into a neo-regionalist drift. Regions will have to become increasingly aware that exploiting the potential of sub-regional bodies for real is bound to make the regional administrative system both more streamlined and more efficient. Accordingly, Regions will have to implement decision-making and procedural mechanisms that take due account of the different regional and local interests. Resorting to co-ordination and collaboration mechanisms will have to be regarded as a way to reconcile the interests vested in the individual bodies so as to bring about the veritable governance of the system at issue.

Similarly, Local Authorities should overcome their long-standing mistrust of Regions and undertake to collaborate with them. It is well-known that disagreements between Regions and Local Authorities did contribute in the past to the establishment of centralist governance systems.

Only in this manner will reforms become possible that feature the increased harmonization of the various levels of government so as to implement a de-centralised, autonomist system that can fully meet effectiveness, efficiency, and cost-effectiveness requirements.

[I] This is the stance taken by Rolla G., 2001, 162, where he points out that the new wording of Article 114 of the Constitution replaces *"a model based on a hierarchical and pyramidal structure... by another model that is multi-polar (or "network-based") in nature, pursuant to the modern multi-level constitutionalism approaches."* The wording "multi-level constitutionalism" was first used to refer to the European integration process, as is widely known, by Ingolf Pernice following the enactment of the Amsterdam Treaty. See Pernice I., 1999, 703 ff.; Pernice, 2002, 511 ff.; Pernice., 2009, 349 ff. Pernice's view is that every governmental level - regional, national, and supra-national - mirrors one of the two or more political identities applying to the citizens that are respectively concerned. Criticisms were levelled at the concept of "multilevel constitutionalism" by Besselink L.F.M. (2007, 6), who believes that *"Thinking in terms of 'levels'…involves inescapably the concept of hierarchy"* because levels imply *"by definition the existence of 'higher" and 'lower' levels, super-ordination and subordination, superiority and inferiority."*

[II] Article 114 was formerly worded as follows: "The Republic is comprised of Regions, Provinces, and Municipalities."

[III] Criticisms were levelled at the Article 114 by Frosini T.E., 2001.

[IV] Articles 115 and 128 of the Constitution were repealed by the Constitutional Act no. 3/2001; they provided as follows, respectively: "Regions are autonomous bodies having their own powers and functions in accordance with principles set forth in the Constitution" ; "Provinces and Municipalities are autonomous bodies within the framework of the principles set forth in general laws of the Republic, which shall determine their functions."

[V] See Pizzetti F., 1979. The author had found that the former version of Article 114 placed Regions and Local Authorities *"on a basically equal footing"*.

[VI] However, there are scholars who do not consider the wording of Article 114 to place the various component parts of the Republic on an equal footing. This is the view held by Anzon A., 2002, 230, who believes that *"one should not construe the new wording of Article 114 differently from what was the case with the former Article 114. It is unquestionable that it does not lay down the principle of equality between the State and other components."* Doubts as for the equal dignity of the entities mentioned in Article 114 are also raised by Barone G., 2005, 340 ff.

[VII] This is the stance taken by Pizzetti F., 2001, 1176 ff. Conversely, other scholars (Anzon A., 2002) consider that exactly the wording of Article 114(2) of the Constitution rules out the equal footing status of the various component parts of the Republic.

[VIII] Article 117(1) of the Constitution.

[IX] Article 117(6) of the Constitution.

[X] It should be recalled in this connection that the administrative reform started by Act no. 59/1997 – know as "Bassanini reform", after the Minister who promoted it - had already allocated administrative tasks and functions to Municipalities, Provinces, and Mountain Community by having regard to the respective geographical areas and membership size.

[XI] Article 120(2) of the Constitution.

[XII] As for the relationships between Regions and Local Authorities both before and after the constitutional

reform, see Marchetti G., 2002.
[XIII] Indeed, the Constitutional Court has repeatedly taken a negative stance vis-à-vis the regionalization of Local Autonomies. See decisions no. 39/1957, 11/1959, 212/1991 and 343/1991.
[XIV] This is emphasized by Pastori G., 2001, 217 ff. and Merloni F., 2005, 95 ff.
[XV] Article 114(2) of the Constitution..
[XVI] Article 117(6) of the Constitution.
[XVII] Article 119(1) of the Constitution.
[XVIII] Article 119(2) of the Constitution.
[XIX] As regards subsidiarity in the new administrative system, see D'Alessandro D, 2004; Cammelli M., 2002, 453 ff.; Tondi della Mura V., 2007.
[XX] We share the prevailing view among scholars, whereby the functions "pertaining" to Local Authorities are the "fundamental" functions applying to Local Authorities, which should be set forth via a State law in pursuance of Article 117(2), letter p., of the Constitution. See, in this regard, Corpaci A., 2001, 1314 ff.; Falcon G., 2001, 1259 ff.; Pizzetti F., 2001, 1178 ff.; Tosi R., 2001, 1233 ff.
[XXI] See decision no. 16/2004 by the Constitutional Court.
[XXII] Concerning decision no. 303/2003, see: Anzon A., 2003; Bartole S., 2003; Camerlengo Q., 2003; Cintioli F., 2003; Morrone A., 2003; Ruggeri A., 2003; Violini L., 2003; Dickmann R., 2003; Moscarini A., 2003.
[XXIII] Act no. 131 dated 5 June 2003 ("Provisions to Adjust the Legal System of the Republic to the Constitutional Act no. 3 Dated 18 October 2001") enabled Government to implement Article 117(2) letter p. of the Constitution and adjust the provisions concerning Local Authorities to the constitutional reform (section 2); it also envisaged the implementation of Article 118 of the Constitution (section 7). However, the enabling powers were not used. Sections 2 and 7 of the Act are commented by Pizzetti F., 2003, 57 ff.; Cittadino C., 2003, 154 ff.
[XXIV] Initial considerations on the decree concerning the so-called fiscal federalism as subsequently enacted by Parliament can be found in Antonini L., 2008; Bassanini F., Macciotta G., 2008; Jorio E., 2008a; Jorio E., 2008b; Jorio E., 2009; Bin R., 2008; Salerno G. M., 2008; Salerno G. M., 2009. See also the presentation held at the workshop co-ordinated by P. Bilancia within the framework of the P.R.I.S. (Progetto di studio sui processi di riforma istituzionale e di modernizzazione economico-sociale del Paese - Study Project on Institutional Reform and Economic and Social Modernization Processes), concerning "Fiscal Federalism and System of the Autonomies" (21 January 2009), as available on the website www.giuripol.unimi.it/pris/pris.htm. A commentary on Act no. 42/2009 can be found in Bifulco R., 2009; Buglione E., 2010; Jorio E., Gambino S., D'Ignazio G., 2009; Martines T., Ruggeri A., Salazar C., 2009, Nicotra V., Pizzetti F., Scozzese S., (eds) 2009; Ferrara A., Salerno G.M. (eds), 2010; Scuto F., 2010.
[XXV] Section 21, paragraphs 3 and 4 of Act no. 42/2009. As regards Municipalities, the following are regarded as fundamental functions: 70% of the administrative, management and control functions; local police; public education; roads and transportation; environmental protection and local management; welfare. As regards Provinces, the following are regarded as fundamental functions: 70% of administrative, management and control functions; public education; transportation; environmental protection and local management; job services and recruitment. All the remaining functions are regarded as non-fundamental for both Municipalities and Provinces.
[XXVI] Section 23, paragraphs 1 to 5 of Act no. 42/2009. Metropolitan cities may be set up in the metropolitan areas including the Municipalities of Turin, Milan, Venice, Genoa, Bologna, Florence, Bari, Naples, and Reggio Calabria, whereupon the respective Provinces shall be discontinued.
[XXVII] Section 23(6), letter f. of Act no 42/2009. As regards metropolitan cities, the following are regarded as fundamental functions: planning of local areas and networks of infrastructures; organization of co-ordinated systems for the management of public services; fostering and co-ordinating economic and social development.
[XXVIII] Section 117(2), letter p. of the Constitution.
[XXIX] Section 117(6) of the Constitution.
[XXX] Section 117(2), letter g. of the Constitution.
[XXXI] See decisions no. 372/2004 and 246/2006.
[XXXII] See, in particular, decisions no. 229/2001 and 244/2005. See also decisions no. 456/2005 and 397/2006. Considerations on the recent case law by the Constitutional Court concerning Mountain

Community can be found in Vipiana P., 2006, 699 ff.; Giupponi T.F., 2006, 544 ff.
[XXXIII] This is the stance taken, for instance, by Umbria via its Regional Act no. 23/2007. See Di Folco M., 2007, 16 ff.
[XXXIV] Decision no. 43/2004 was commented upon by Dickmann R., 2004; Groppi T., 2004; Parisi S., 2004; Marazzita G., 2004; Merloni F., 2004a.
[XXXV] Reference is made, in particular, to decisions no. 69, 70, 71, 72, 73, 74, 140, 172, 112, 227, 173, and 240/2004, no. 167/2005 and no. 397/2006.
[XXXVI] As well as the aforementioned decision no. 303/2003, see decisions no. 6/2004 and 423/2004, and no. 31/2005; as regards in particular the fundamental functions applying to Local Authorities, see decision no. 43/2004 (paragraph 3 thereof).
[XXXVII] In particular, decision no. 303/2003 found that "the legality principle... requires that the functions one takes over in pursuance of the subsidiarity principle be organised and regulated by law" (here, State law). This issue is analyzed by D'Atena A., 2003, 2776 ff.; Salerno G. M., 2004.
[XXXVIII] Section 119(1) and (2) of the Constitution.
[XXXIX] Section 119(2) of the Constitution.
[XL] Decision no. 423/2004 by the Constitutional Court.
[XLI] Decision no. 427/2004 by the Constitutional Court.
[XLII] Decision no. 37/2004 by the Constitutional Court, on which see Jorio E., 2007.
[XLIII] See decision no. 37/2004 by the Constitutional Court.
[XLIV] Decision no. 37/2004 by the Constitutional Court.
[XLV] Decisions no. 372/2004 and 423/2004.
[XLVI] In this connection, the Constitutional Court has reiterated that the role played by the State should not translate into the setting up of funds on whose use restrictions are placed, as regards any matters falling within the Regions' and Local Authorities' scope of competence. See, in this connection, decisions no. 370/2003; 16, 49 and 423/2004; 31, 51 and 231/2005; and 188/2006.
[XLVII] Article 117(2), letter e. of the Constitution.
[XLVIII] Article 119(4) of the Constitution.
[XLIX] Section 2(2), letter q. of Act no. 42/2009.
[L] Section 2(2), letter s. of Act no. 42/2009.
[LI] Section 13 of Act no. 42/2009.
[LII] Suffice it to say in this connection that it is rather difficult to foresee when the fiscal federalism reform can enter into force.
[LIII] Origin and meaning of the word "governance" are expounded in Bilancia P., 2007. P. Bilancia (2004, 15) refers to the integration process *"between State level (including the respective non-State levels) and supra-national or international levels"* to point out that *"the shift from a unified State model to a composite unified State model"* requires *"by necessity sophisticated governance approaches to ensure that this complex, integrated system based on a multi-level framework always retains, both internally and externally, the fundamental balance between unity and diversity that is the very precondition for the existence of a politically organised community."* See, in this regard, Cassetti L., 2003.
[LIV] The need for governance at regional level was addressed by De Martin G.C., 2005, 981 ff.; De Martin G.C., 2006, 30 ff.; Merloni F., 2004b, 283 ff.
[LV] See, in particular, decisions no. 313/2003 and no. 43/2004 (see paragraph 2.2).
[LVI] As regards the fair co-operation principle following the constitutional reform, see Bilancia P., 2001, 67 ff.; Bifulco R., 2006, 3356 ff.; Bin R., 2007, 393 ff.; Ferraiolo G., 2006, 694 ff.; Gratteri A., 2004, 423 ff.; Merloni F., 2002, 827 ff.; Torchia L., 2002, 647 ff.
[LVII] An analysis of the relationship between subsidiarity and fair co-operation from both the domestic and the EU standpoint can be found in Bin R, 2002a, 1009 ff.; Spadaro A., 1994, 1042 ff.; Cappuccio L., 2001, 342 ff.
[LVIII] As for the steering and planning functions pertaining to Regions in the trade sector, see the considerations made by Bilancia P., 2005a, 753 ff.

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The German Constitution in the future of the European Union after the judgment of the Federal Constitutional Court on the Lisbon Treaty*

by Thomas Jansen

Perspectives on Federalism, Vol. 2, issue 1, 2010

Abstract

This note analyses the legal reasoning and the motivations of the recent judgment of the German Constitutional Court on the Lisbon Treaty and considers the possible impact of this ruling on the future of the European integration.

Key-words:
Lisbon Treaty, German Constitutional Court, European integration

Following the judgment on the treaty of Lisbon passed by the Federal Constitutional Court (Bundesverfassungsgericht) on June 2009 it would appear that – at least as far as the German Constitution (Grundgesetz) is concerned – there is not much more to add to the topic of our session. The German Constitution continues to be the benchmark, also for the future of the European Union, for development, so much so that we ought to ask ourselves: what future does the German Constitution allow the European Union?

It allows the entry into force of the Treaty of Lisbon, as long as the Bundestag and the Bundesrat implement a concomitant law on the extension and reinforcement of their rights to intervene in the affairs of the European Union, to the extent indicated by the Constitutional Court. However, it also raises barriers to further progress in the unification of Europe.

The assent of the Federal Republic of Germany to the entry into force of the Treaty of Lisbon, which changes many aspects of the character of the European Union in the sense of a community similar to a State, is nevertheless possible – according to the Federal Constitutional Court - because, while undergoing all the changes envisaged, the character of the EU as an "association of States" (Staatenverbund), the existence and development of which depend on the provisions made by the Member States, remains unchanged. Furthermore, the rule limiting single authorisations with regard to the transferral of competencies to the European Union continues to be valid. The threshold of the construction of a European Federal State cannot however be bypassed in such a way as to arrange jurisdiction of the jurisdiction, which would mean the foregoing of national sovereignty by the Federal Republic. Germany remains a sovereign state and retains responsibility for its fundamental national duties.

The message states: This far and no further! It is a political message with which, within the debate on Germany's political future in Europe, the Federal Constitutional Court takes the side of the "Eurosceptics".

It is believed that: "the German Constitution does not allow bodies that act on behalf of Germany to transfer – via entry into a federal state – the German people's right to auto-determination into the form of Germany's right to popular sovereignty. Due to the irreversible transferral of sovereignty to a new legitimising subject, this step is reserved to the direct will of the German people."

The logical question is then "What else?" Should "the will of the German people " be implemented against "the bodies that act on behalf of Germany"? Who, if not the bodies that act on behalf of Germany, should interpret the will of the German people?

This aside, where does it state that the entry of the FRG into a European federal State following a consequent transferral of sovereignty is forbidden by the German Constitution? No such reference is made in the Constitution. No ban can be derived from the fact that Art. 23 does not explicitly contemplate a similar development, so this theory must be founded in complicated, problematic assumptions based on the democratic precept. Nor is the development "of a European Union conceived as an association of states" contemplated, - contrarily to what the Court would have us believe. Indeed – according to the German Constitution – the question of the finality of the integration process is still open.

Accordingly, from the start up to the present day, all the federal governments – with the approval of the Bundestag, the Bundesrat and the people, who have confirmed this policy via election on several occasions – have ensured that it remains open, also with a view to possible development in the sense of a federal state.

Article 23 the German Constitution requires, as pre-condition to every possible development that the European Union "be faithful to the democratic, social and federative principles, to the rule of law and to the principle of subsidiarity, and that it ensure, in the essence, defence of fundamental rights like that guaranteed by this Constitution." All of this seems more compliant with a Federal State than an Association of States.

The indications of the Constitutional Court deriving from a ban of the German Constitution, meaning that the European Union cannot be allowed to cross the threshold of the Federal State, explains the satisfaction of the opponents of a more advanced unification policy, who also include those detractors of the Treaty of Lisbon contradicted by the judgment issued by the Court. Indeed, the tone of the verdict allows the assumption

that the threshold will, in the end, be established by the Court, in agreement with their expectations.

The Court's argumentation, presented with immense juridical elegance but not as much transparency, is not however – within the framework of the premise chosen – lacking in logic. The premise states that, with the interpretation served on 30 June 2009 by the Federal Constitutional Court on the German Constitution, Germany has reached the end of the line.

It derives that in the extensive explanations, deductions and motivations relating to the judgment, there is no room for the historical dimension of the European integration process. The representation of the development of the European treaties can be read as though the last 60 years of European history have taken place within a jurisprudence seminar. The respective historical contexts of the single levels of development are not taken into consideration.

For example, no mention is made of the fact that the Treaty of Maastricht was the necessary consequence of 40 years of experience of integration and that the subsequent reviews of the Treaty, from Amsterdam via Nice as far as Lisbon, were nothing other than responses to the historical events that took place in 1989/90. Nor are there any references to and clarifications of the circumstances, which has meant that the elaboration of the Treaties has only been possible on the basis of the consent which could be reached between the bodies which acted on behalf of the Member States regarding the needs of the moment and the guidelines of the unification process.

In drawing up the motivations of its judgment, the Constitutional Court failed to consider this dimension, it obviously cannot even imagine that future developments – like those which await us as a consequence of globalisation – could require answers that – in the interests of European citizens, including the people of Germany – would contemplate further cessions of sovereignty by the Member States, which as a further consequence could lead the European Union to cross the fateful threshold of a federal state organisation. Or could it be that perhaps the Federal Constitutional Court, as far as it has considered this possibility, feels that it needs to protect Germany from Europe?

We cannot even see why – as felt by the Court on the other hand - in a federalist evolution of the European Union, Germany should lose its "nature as a sovereign constitutional state", its own "constitutional identity" and its "capacity for independent

political and social organisation of the quality of life". Those are fears based in ideology. From the analysis of the situation and the state of the German Länder, we can see that the member states of a federation can retain such attributes, both in terms of principle and in practice. This is the charm of the federal order: the fact that every level of sovereignty and responsibility has its own dignity and organisational freedom.

In other words: also in the future of the EU (and of the European Federal State itself should it ever become a reality) the German Constitution will not lose its value or its social and political role.

The Federal Constitutional Court sees sovereignty as: "freedom regulated and restricted by international law". But if we look closely, not only is this freedom regulated and restricted by international law, in different ways it is also regimented and limited; the freedom of action of the States is shared with the bodies of the various levels that exercise it together or in competition with one another; with the municipalities, regions and the European Union, but also with international organisations and other players who participate in global governance.

In fact, in our historical situation, the definition of sovereignty as freedom means, above all, that the State, its bodies and its people, both internally and externally, must be assured the possibility to rely upon the partners implicated in the political process. Integration, subsidiarity and interdependence are today's units of measure for the freedom of action of informed sovereign states at the political level for which they are responsible, as well as at international, supra national or transnational levels, within which they hold joint responsibility.

Moreover, it is necessary to note that, significantly, the concept of sovereignty, which is central to the argumentation of the Federal Constitutional Court, makes no appearance whatsoever in the German Constitution. The German Constitution does not require Germany to be a national sovereign state, but "a member holding equal rights in a united Europe" (Preamble).

Der unvollendete Bundesstaat (The Unfinished Federal State) was the title of a book by Walter Hallstein published in 1969, in which the political and institutional system of the European Community was carefully described in the spirit of the title. The Italian edition, with a foreword by Giuseppe Petrilli, was entitled "Europa: federazione incompiuta" (Europe: unfinished federation). The German edition, which was printed in

several subsequent extended and updated reruns, was published from 1973 under the title of: "Die Europäische Gemeinschaft" (The European Community). Hallstein had obviously come to the conclusion that the title initially chosen could be misleading, inasmuch as a description and denomination of the growing supranational community for which a federative order had to be forged, the concepts of the doctrine of the classic state were no longer valid and were therefore capable of generating more confusion than clarity. Only the precise analysis of the situation and its development could lead to the understanding of this new political system and its procedural character and finally allow the exact formulation that would clarify the reference categories. At the time, the concept of "Community", according to Hallstein's point of view, struck the essence of the problem in question.

The reality of the European Union and its development, within the scope suggested by Hallstein, have brought us to the threshold of the political union described in the Treaty of Lisbon. The reality of the EU is, in truth, much richer than stated in the Treaties. The dynamics of the political process, the permanent interaction of the bodies and players, the practical and progressive connection of the systems of power at various levels, the role and influx of the European political parties and their supra national groups, the growing power of control and decisional power of the European Parliament, the trans-nationalisation of civil society, the constant Europeanisation of public opinion and, last but not least, the success of the Monetary Union with its federal structures – all this forges the character of the European Union well beyond what the decisional system formalised in the treaties allows us to see. This reality was not perceived by those who drew up the judgment on 30 June.

The German Constitution will not interfere with the unification and integration movement, as is visible from the statements made above and which goes beyond Europe – as can be deducted from the intensification of the global governance structures. In 60 years of history, the German Constitution has always proven to be valid, also in terms of its opening to the needs of European unification.

It would be ridiculous if this movement, which founds and guarantees the peace, freedom and wellbeing of European citizens, were to be stopped in future due to the judgments of the Federal Constitutional Court with reference to the German Constitution.

[*] Contribution to the Vigoni-Forum, Villa Vigoni, 15-18 July 2009: "The constitution: past and future. Sixty years of experience in Italy and Germany."

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European single currency, citizenship and constitutional developments

by

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Abstract

The author questions the influence of the creation of a single currency on the formation of European citizenship. Whereas the transnational dimension of such citizenship (which affects the citizen of one Member State residing in another) must be kept separate from the supra national dimension (which affects the relationship between the people and the public powers of the Union), he believes that the euro mainly concerns the second dimensions and that it marks the peak in the contradiction between the success of the European market (compared with the division in national markets) and the failure of the Union as an organised form of political cohabitation. The reasons would consist mainly in the shortsighted and irresponsible vision of the national political classes, interested in maintaining the image of a European bureaucracy or technocracy in order to continue gaining consensus without taking responsibility.

Key-words:

Euro, single currency, citizenship

Our seminar's general topic[I] poses a variety of questions. We might first ask ourselves whether the euro, being an instrument of economic exchange, is likely to concur to the creation of European citizenship, the decisive conditions of which have rather to do with politics. This question requires an approach grounded on political philosophy.

Irrespective of such approach, we might then inquire into the extent to which the euro, having been adopted ten years ago as single currency by the majority of the EU Member States, has affected the representations of European citizenship. In such case, the euro is seen as a symbol, perhaps the most powerful symbol of the EU, and the question is sociological, concerning the identity of the European citizen.

However, the fact that the euro has been adopted as the EU's single currency might raise the further question of whether it has succeeded on economic and financial grounds, and, if so, of the political and social consequences of this success. Economists should be in the frontline to provide an answer to this question.

Finally, we might deal with the topic moving from the fact that, according to the EEC Treaty, the status of European citizen is automatically acquired by citizens of the EU member States and that it consists of the rights and duties indicated in that Treaty. In this perspective, which is clearly legal, the connection between the single currency and European citizenship is far less evident than in previous cases. But this does not mean that it does not exist. Its existence depends rather on the approach taken by legal scholars while reconstructing the notion of European citizenship. According to a formal approach, no relevance should be given to the establishment of the single currency for the aim of such reconstruction, given the absence in the European treaties of any connection of that sort. The result does change, if we consider the treaty's provisions concerning European citizenship as the basis of a process aimed at progressively defining the main features of such notion. In that case, the single currency is likely to be included among the components of that process.

Legal discourses on European citizenship are therefore capable of including within their analysis the issue of the single currency to the extent that they leave aside the pretext of exhausting the definition of European citizenship in formal terms, that is, by exclusively relying on the Treaty's provisions. A preliminary choice is therefore needed.

It is time to recall that Article 20 of the TFEU (Treaty on the functioning of the European Union, approved in Lisbon together with the amended Treaty on European Union), which reproduces art. 17 of the TEC, still in force, states that

"1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subjected to the duties provided for in the Treaties. They shall have, inter alia:

a) the right to move and reside freely within the territory of the Member States;

b) the right to vote and to stand as candidates in elections in the European Parliament and in municipal elections in their Member States of residence, under the same conditions as nationals of that State;

c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State under the same conditions as the nationals of that State;

d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder".

Most legal scholars, however, believe that, while reconstructing the notion of European citizenship, further elements need to be taken into account, namely the judicial developments following the enactment of the Treaty of Maastricht and the fact that the features of such citizenship are inextricably connected with a legal order which is itself far from being fairly stabilised.

In this perspective, European citizenship is conceived as part of a broader process of progressive definition of the EU's identity, rather than as a clearly defined legal notion. This brings the legal approach closer to the sociological approach, although the former, contrary to the latter, is bound by the aforementioned constraints, which in the meantime

afford at least a general structure of the discourse. While taking a legal approach, even the function of the single currency in the construction of European citizenship needs then to be investigated in light of these elements.

An analysis of the Treaty provisions, of the further developments due to the European Court of Justice, and of the attempts at constitutionalization of the EU succeeding, in other words, since the 2001 Laeken Declaration, drives to the assumption that European citizenship is characterised by two distinct dimensions: transnational and supranational. While the former corresponds to the bundle of rights of the citizen of an EU Member State moving to or resident in another EU Member State, the latter corresponds to that citizen's rights with respect to the EU institutions (Pinelli, 2005).

The transnational dimension is older and far more consolidated than the supranational, going back to the very foundation of the EEC, grounded on freedom of movement of people, goods, services and capital, and particularly to the ECJ's recognition of the EEC Member State employee's rights, irrespective of residence in a certain Member State.

This case-law was encompassed in Article 17 of the TEC. While stating that citizens of the Union shall have "a) the right to move and reside freely within the territory of the member States", the Treaty of Maastricht used the word "citizen" to label the bundle of rights which the ECJ had already deemed inherent in the status of the citizen of a certain Member State working in another Member State. On the other hand, Art. 17, a) of the TEC paved the way to a further development of the ECJ's case-law Departing from the need to combine the right to free movement with the equal treatment principle, the ECJ holds that free movement is a fundamental right that does not need to be justified. It is rather for the Member State to justify any restriction to such right as reasonable and proportionate. This reversal of the burden of proof puts the citizen on the move in a much stronger position vis-à-vis national administrations. The cases relate to the need to reconcile free movement of citizens with policies such as access to education, social benefits and taxation, which are highly sensitive and close to national sovereignty.

The Treaty, as implemented by the ECJ, is also bringing about more recognition of citizens as citizens rather than as different categories of the population or professions. Following the lead taken by the Court, EU legislation on free movement and residence – the "European citizenship" directive (2004/38) – collects nine separate legal texts for

different categories. Similarly, new legislation on the recognition of professional qualifications brings together 15 previous texts for separate professions. At any rate, the expansion of the transnational dimension of European citizenship is still led by the ECJ. Legislative acts follow, and tend rather to rationalise, previous judicial holdings.

The supranational dimension of European citizenship appears more fragile and problematic than the transnational. Its legal origin lies of course in Art. 17 of the TEC, but the only rights recognised therein as corresponding to the supranational dimension are "d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language". A pitiful, if not insignificant, list, certainly not comparable with the flourishing recognition of the European citizen's rights grounded on freedom of movement. Nonetheless, the Treaty provisions are far from exhausting in relation to the rights which are likely to be connected with the supranational dimension of European citizenship. The 2000 Charter of fundamental rights of European citizens has become a crucial point of reference for these rights, mainly due to the case-law of the national courts. European courts, on the other hand, have hugely expanded their own jurisdiction over rights falling outside the traditional sphere of the European market.

Hence derives the widely held opinion that European citizens' rights, both in the transnational and in the supranational dimension, are being given sufficient judicial protection, and that the issue at stake is rather the overlapping among national and European Courts, including the European Court of Human Rights. Apart from this inconvenience, the degree of protection of citizens' rights at European level is believed to have gradually reached that ensured at national level. However, this does not lead to the conclusion that the process of creating European citizenship has come to an end. To the contrary, in spite of the increasing judicial protection of citizens' rights which has taken place over the last decade, European citizenship remains difficult to obtain.

Where does the source of this difficulty lie? Why is European citizenship still a pale figure, compared with national citizenship? Attention needs to be drawn to the persistent asymmetry between the enormous impact of the EU's decisions on citizens' lives and expectations on the one hand, and the representation of politics, which is still largely positioned within the borders of each Member State. Such persistent asymmetry is due to the interest of national governments and political parties in burdening the EU with solving

problems which appear politically intractable on a national scale, thus threatening their own electoral consent. The fact that European political decision-making depends largely on the action of national governments and representatives is therefore carefully hidden behind the image of the EU as a bureaucratic or technical entity, detached both from popular feelings and from political passion, which has characterised it right from the start. This result is achieved through the sophisticated devices that characterise the EU's institutional system, including the unanimity rule affecting the Council's decisions, and through the resistance of parties to transform the EP's elections into a competition among different political visions of EU policies, by appointing a candidate to the Presidency of the Commission, with the presentation of a corresponding programme, by the main European political families represented at the Strasbourg Assembly. Hence derives the mistaken impression of politics as a national activity steadily connected with the interests and passions of citizens, which the media corroborates while depicting an EU standing against the background of a blue sky, remote from the earth of citizens' lives and expectations.

The single currency issue is an important piece of the picture. Apart from its impact on the transnational dimension of citizenship, consisting in the facility of monetary exchanges within the Eurozone, as far as the supranational dimension is concerned, the single currency has created a parallel asymmetry. The single currency immediately acquired a crucial role in the development of the single market and, contrary to certain beliefs, a positive impact on the certainty of market exchanges. It might also be inferred that, without the single currency, the 2008 global financial recession would have brought the economy of the Eurozone's Member States to its knees. Moreover, the euro's performance in the recession is likely to change the stance of some of the States which have not adhered to it, despite having the necessary financial requirements.

The institution of the single currency and of an independent central bank aimed at granting financial stability has thus proved to be a necessary condition for the sake of the European economy. However, it has also appeared insufficient in order for it to flourish. This depends inter alia on the absence of an institutional counterpart of the ECB, corresponding to the Finance minister at the EU level, which the informal gathering of the Eurozone's Finance ministers in the so-called Eurogroup appears unable to supply. For such purposes, the Eurogroup's Member States should forego a significant part of their own competencies in national political economy. However they are far from accepting such

limitation, which would weaken their power over issues decisively affecting the relationship with their respective electorate, including taxes. In this respect, Member States are not ready to go beyond slight forms of intergovernmental coordination, such as that provided in the 2000 Lisbon Strategy. Why, unlike the Maastricht standards, aimed at granting financial stability within each State of the Eurozone, and therefore strictly connected with the ECB's task, did the Lisbon standards, aimed at enhancing economic growth, fail to be achieved in most cases? The answer lies in the respective institutional assessments. While the evaluation of the respect of the former standards, and the correspondent sanctioning, was centralised before the European Commission, the latter, beyond the rhetoric surrounding the "open method of coordination", remained in the hands of national governments. A trade-off has consequently emerged during the last decade between the welfare of European citizens and the national organisation of politics.

Such a trade-off is unknown to since even minimal information on such issues goes against the interests of politicians and holds no appeal for the media. Unsurprisingly, citizens tend to perceive the euro as the most powerful symbol of a European technocracy wholly detached from their own interests. And it is no mere coincidence that, after going to referendum in Denmark (2000) and in Sweden (2003), the adhesion to the single currency failed to achieve the consensus of majority of voters, popular support for the national currency, seen as a symbol of national identity, being stronger than economic considerations.

Let us now look at the attitude of the elites. After the rejection of the Treaty establishing a Constitution for Europe at the French and Dutch referendum, no reference to the symbols of the Union, including the euro, was made in the Treaty draft which was approved in Lisbon, as if the elites were now ashamed of the neurotic quest for European identity which had affected the constitutional treaty.

Nevertheless, the single currency is the most powerful landmark of supranational integration, and corresponds to its point of no-return, being inextricably connected with the single market. Unless caught by a *cupio dissolvi*, no member of the Eurozone would abandon the single currency. The "paradox of the euro", that is, the contradiction between the good performance and the scarce popular support of the single currency (Bini Smaghi, 2008), ultimately reflects the same gap between reality and representation affecting the EU at large. Once again, we are confronted here with the lip-service that characterises the

Member States' attitude towards the EU. It is this attitude that inevitably biases European citizenship, making the claim of a 'European identity' artificial. The vicious circle currently affecting the relationship between EU Member States is likely to be reversed either due to the pressure of an external threat, or because of the emergence, particularly among younger generations, of a public opinion seeking a fresh approach to the European enterprise. In this respect, a longstanding commitment would of course be required from groups, associations and networks, founded both on the delivery of information about the present, and on a thorough understanding of the challenges that a democratic supranational organisation such as the EU is expected to meet in the years to come.

[I] Report at the Seminar organised by Fondaca-Scuola Superiore S.Anna di Pisa, "The Single Currency and European Citizenship. An Assessment", Pisa, June 3rd 2009

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PERSPECTIVES ON FEDERALISM

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The Federal Perspective in the Schuman Declaration

by

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Abstract

This short note aims at providing an analysis of the Schuman Declaration focused on the following points: 1) the genesis of the Schuman Declaration; 2) its federalist content; 3) its topicality.

Key-words:

Schuman Declaration, federalism, European Communities, European Union

The Schuman Declaration (9th May 1950), whose 60th anniversary is celebrated this year, is the founding document of the European unification process. Based on the Franco-German reconciliation, it marked the first step in the actual construction of a united Europe, a process that, despite not yet being completed, has progressed so much that the achievement of the final goal seems possible – though not to be taken for granted. This is explicitly stated in the declaration, which establishes the pooling of coal and steel production, managed by an authority independent from national governments and whose decisions are binding on France, Germany and the other subscribing countries. It represents "a first concrete foundation of a European federation", which provides a key contribution to the creation of world peace. Precisely because the final goal has not been achieved yet, the declaration is still of topical interest, not only in relation to the rules and purposes it sets but also due to the crucial choice of making a qualitative leap forward without being hindered by national vetoes. That being stated, I shall focus on the analysis of three main points: 1) the genesis of the Schuman Declaration; 2) its federalist content; 3) its topicality.

1. The dynamics of the European unification process were illuminatingly clarified by Altiero Spinelli, in an embryonic way in the Ventotene Manifesto (written in 1941 and representing the founding document of the movements fighting for the federal unification of Europe) and then, more precisely, after the War. According to the founder of the European Federalist Movement, the European unification process is based on a deeply rooted and enduringly powerful historical drive, deriving from the structural and irreversible crisis of the European nation-states. This basically consists in the structural inability to face, by means of absolute national sovereignty, the fundamental problems of economic development, democratic progress and security, which have become supranational issues due to the growing and unrelenting interdependence created by the advancement of the industrial revolution. After the collapse of the European system of states occurred at the end of the World Wars period (when the hegemonic unification of Europe had been attempted), national democratic governments were faced with the unavoidable choice between "joining or dying", a situation that the French Minister of Foreign Affairs Aristide Briand had already foreseen in September 1929, when he

presented the first proposal for a united Europe put forward by a national government. This led to the establishment of a European unification policy having a sound structural basis but hindered by a major structural obstacle, i.e. the tendency by those who hold national power – deriving from the law of self-preservation of power already explained by Machiavelli – to oppose the actual handing over of most of that power to federal supranational institutions, a prerequisite without which an effective, democratic and irreversible unification of Europe cannot be achieved.

Given this contradictory stance held by the national governments, a strong European unification policy (going beyond mere intergovernmental cooperation based on unanimous resolutions) can assert itself only when the structural crisis of the national States results in a severe crisis of power as well as in complete governmental impasse. The process also requires the presence of bold statesmen and the active participation of authoritative personalities – yet independent from the logic of conquering and preserving national power – and movements working towards the federal unification of Europe and the mobilisation of the general public in support of this objective.

It was such a situation that inspired Schuman's action in 1950. Until then, policies for the unification of Europe had been pursued in Western Europe (the only portion of the continent in which there was a certain freedom of choice). These policies had been stimulated by the failing power of nation-states, the breaking out of the Cold War, and the decision by the U.S., with the Marshall Plan established on 5th June 1947, to link recovery aid to the establishment of intra-European cooperation. However, the international organisations that were created as a direct or indirect consequence of pressures by the U.S. – i.e. the Organisation for European Economic Cooperation (which in 1960 became the Organisation for Economic Cooperation and Development), the Brussels Pact (which in 1955 became the Western European Union), and the Council of Europe – were characterised by an extremely weak confederal structure. This was mostly due to the fact that the United Kingdom (a country in which the historical crisis of the nation-state had manifested itself less evidently), the main founding country of those organisations together with France, was particularly strict in defending national sovereignty and the other partners were unwilling to proceed without the United Kingdom. The qualitative leap from these early, weak forms of European cooperation to a European integration process was strongly facilitated by the evolution of the German question, induced by the American policy.

A fundamental corollary of the American strategy for the containment of the Soviet block (which, starting from the Truman Doctrine of 12th March 1947, had led to the Marshall Plan and then to the establishment of the Atlantic Alliance) was the decision to carry out the economic and political reconstruction of the portion of Germany occupied by the Western powers, rejecting the previous policy which aimed at preserving the division among Western occupation areas and at severely limiting the economic development of Germany. Aware of the fact that, without the full recovery of one of the nations that had always been crucial for the economic development of Europe, Western Europe would have remained fatally weak, the Americans achieved the creation of the Federal Republic of Germany and then included in their agenda the elimination of any obstacle to the full development of the German economy. As a consequence, they enabled the Germans to reclaim their heavy industry, which was under the Ruhr International Authority and hence subject to production limitations. Faced with this decision by the U.S., the French government – whose foreign minister was now Robert Schuman, representative of the "party for the reconciliation with Germany" – was caught between two fires: severe concerns about the future revival of the German power, based on its economic recovery, and the prospect of a heavy diplomatic clash, doomed to failure, with the Americans, determined to accomplish the full economic recovery of West Germany without delay. Nevertheless, France was able to overcome this impasse with the courageous proposal, put forward by Jean Monnet, to place under common European control the coal and steel industry of Germany, France and any other European country willing to undertake this venture. Following immediate positive responses by Adenauer in Germany (Adenauer was the leader of the German party for the reconciliation with France), De Gasperi in Italy, and the Benelux countries, the problem was solved by creating, as suggested by the Schuman Plan, an organisation that was completely new if compared to the Brussels Pact, the OEEC, and the Council of Europe.

What was fundamentally new about the European Coal and Steel Community is the federal perspective it implied. Before proceeding with a detailed analysis of this aspect, I wish to clarify two issues. First of all, the extremely important link between the German question and European integration does not at all mean that integration is a tool to exert control over Germany. The European unification actually originates in the permanent and irreversible crisis of the system of European nation-states, which during the period of the

World Wars and the antifascist Resistance led to a widespread awareness of the "joining or dying" issue. Against this background, without which the European unification process could not have started and developed, the issue of Germany (the last state in modern history aiming at hegemony over Europe, after Spain and France) peacefully living together with the other European countries has played a crucial role, since it has provided the most progressive pro-Europeans – in France, Germany, and other partner countries – with a significant and concrete political resource to overcome any nationalistic oppositions to a deep supranational unification policy.

Secondly, it should be underlined that one of the fundamental reasons for Schuman's ability to overcome nationalistic opposition in his country lay in the method he adopted to develop his action. He prepared the launch of the ECSC project without involving the personnel of the Ministry for Foreign Affairs, knowing perfectly well that there would have been strong opposition capable of thwarting his initiative right from the start. He instead entrusted Monnet and his collaborators from the Planning Commission with the drafting of the Plan and worked towards raising public support in France and in the other countries, in order to make it harder for the diplomacy or the entrepreneurial world to run the project aground.

2. If by federation we mean the overcoming of absolute national sovereignty through the creation of a federal state (a state of people and states), i.e.of supranational democratic institutions with direct power over the citizens of the federation and with direct participation by the nation-states in the decision-making process, hence ensuring the preservation of their inviolable autonomy, then it is evident that Schuman's initiative contains a federal perspective. Despite not having led to the establishment of a fully-fledged federation, it achieved the overcoming of simple intergovernmental cooperation and it laid the foundations for the creation of a federal state, since only the brave and dramatic decision of relinquishing exclusive national sovereignty was capable of preventing a prospect, i.e. the full re-establishment of German sovereignty, that was rightly perceived as full of extremely dangerous implications.

More precisely, if we wish to wholly understand the federalist content of Schuman's proposal, we should refer above all to Monnet's vision, as he was the main inspirer of the

proposal. The functionalist approach to European integration, which Monnet consistently and practically supported, and the federalist approach, which undoubtedly had in Spinelli its main promoter, share a common objective: the creation of a federal state. Hence, the two approaches belong to the same coalition, in contrast to the party promoting confederalism, whose main representatives were Churchill and De Gaulle. That being stated, Monnet's functionalist approach was characterised by the belief that the best way to overcome any opposition to the overcoming of national sovereignty is to gradually develop integration in limited but increasingly important state sectors or functions, in order to achieve a gradual and almost painless draining of national sovereignty. Monnet, who had devised the specialised supranational organisations created during the two World Wars to pool the economic and military resources of the Allies and make their war efforts more effective, was convinced that the method implemented during the Wars could be applied also in time of peace to pursue the unification of Europe.

In practical terms, the method he proposed in the post-war period consisted in handing over the administration of some public activities to a dedicated European administrative body, which would receive common directives from the nation-states, formulated by means of treaties and intergovernmental resolutions. However, within the scope of these directives, the administrative body would be separated and independent from the national administrations. The national policies to be pooled – destined to create the most serious grounds for rivalry among European States – were those concerning coal and steel, which were considered at that time as the two basic products in the economy of industrialised countries. Placing the production and distribution of coal and steel under common rules, applied by a supranational institution, would generate shared interests and solidarity, so deep and so crucial for the economy that they would lead to the gradual integration of all the other economic aspects and, at a later stage, of any other key state activity, among which foreign policy and defence. The unification accomplished by the various specialised agencies around concrete interests and efficient supranational bureaucracies would in the end lead to the crowning achievement of a federal constitution.

Incidentally, I wish to emphasise that, besides some superficial contrapositions emerging within the context of political debate and a certain amount of verbal animosity from both sides, the fundamental difference between the federalist approach and the functionalist approach can be summarised in two points. The federalist approach is the

constantly reasserted belief that European integration is doomed to remain precarious and reversible until a federal constitution is implemented, which can be achieved not by intergovernmental conferences (unanimous and secret resolutions by government representatives and unanimous ratifications) but only through a democratic constituent method (resolutions by majority approved by representatives of the citizens and ratifications by majority). The second feature is being in contrast with functionalist automatism, being persuaded that achieving a federal state requires the creation of a movement for the European union, which can also pursue intermediate objectives but must be independent from governments and parties as well as capable of mobilising the public opinion pointing out the structural limits of functionalist integration. These limits lie mainly in its precariousness and inefficiency (due to the need for unanimous decisions concerning key issues) and in the so-called democratic deficit (the draining of national sovereignties without the establishment of a fully developed supranational democratic sovereignty). Therefore, the two approaches are different (Monnet's approach was defined as weak federalism versus the strong federalism of Spinelli) but, at the same time, dialectically complementary (i.e. each one having an autonomous and decisive role).

After having clarified this point, let us go back to the relationship between the functionalist approach and Schuman's initiative. The previously mentioned impasse, which the French government had come to, opened for Monnet a window of opportunity that enabled him to realise the revolutionary invention of the European Community system. The ECSC actually had in common with the early European intergovernmental organisation the characteristic that decisional power was ultimately still in the hands of the national governments, which corresponded to the fact that not all the governments were willing to accept the irreversible handing over of their sovereignty to supranational bodies (the treaty's validity was limited to only fifty years!). Nevertheless, it already displayed some important federalist traits: the crucial role given to a body, the High Authority, that was independent from national governments; the direct effectiveness of Community legislative and judicial acts within the member states; the allocation of own resources to the community budget based on a levy and on European bonds; the principle of vote by majority for a part of the resolutions of the Council of Ministers; the possibility to directly elect the common parliamentary Assembly, which also had the power to dismiss the High Authority with a no-confidence vote. It should be underlined that the governments had to

accept these federal characteristics because the achievement of an objective much more advanced than the mere liberalisation of trade actually required stronger and more efficient institutions, which should be, at least in perspective, democratised, in order to avoid a situation in which the competences transferred to a supranational level might not be subject to effective democratic control. The final goal of a federation was not mentioned in the text of the treaty but it was stated in the text of the declaration on the basis of which the negotiations were carried out; since the declaration was accepted by the other governments, it turned into an official commitment towards the final purpose of European integration.

Besides these elements included in the Schuman Declaration and in the treaty deriving from it, the federal perspective can also be detected in the choice of proceeding on the basis of a more limited group of countries in comparison to the states involved in earlier pro-European initiatives. When the ECSC proposal was put forward, the OEEC had existed for over two years and the Council of Europe for one year; they included the Six as well as the United Kingdom and the majority of Western European countries. The crucial procedural choice made by Schuman was precisely to operate outside the juridical framework of these two organisations, within which the United Kingdom and, in its train, the Scandinavian countries and Portugal, would have eliminated the innovative features of the initiative, and to open negotiations only among the governments that were willing to discuss the implementation of a supranational authority. This led to the creation of an advanced core group of states within a wider circle supporting purely intergovernmental cooperation, in the belief that the success of the venture would later result in the involvement of states that had previously been reluctant – which is what actually happened.

This procedural choice asserted itself due to the nature of the problem to be solved (avoiding the full re-establishment of German sovereignty) and thanks to the initiative of the European Federalist Movement and the Union of European Federalists, of which the EFM was a member and the leading vanguard. Immediately after the Council of Europe came into being, the federalists organised a wide campaign throughout Europe to promote the stipulation of a federal pact for the establishment of a supranational political authority, democratically elected and provided with the necessary powers to implement a progressive economic unification, run a common foreign policy, and organise common defence measures. The coming into effect of the federal pact among the ratifying countries – and

this was the key point – would not require unanimous vote by the member countries of the Council of Europe, but its ratification by at least three states reaching a total population of one hundred millions would be sufficient. The federalists basically proposed to apply to the European unification one of the fundamental principles characterising the procedure on the basis of which, in North America, the Philadelphia Convention of 1787 drafted the first federal constitution in history, i.e. the overcoming of the unanimous ratification requirement. This move by the federalists undoubtedly made Schuman and the governments of the Six even more determined to proceed with the strategy of the vanguard group.

3. Sixty years after the Schuman Declaration, it is clear that great progress has been made towards European integration. Within a framework of gradual advancement in a federal and democratic direction of the European Community system (in particular, the direct election and widening of the powers of the European Parliament, and the extension of qualified majority voting in the Council), very relevant integration goals have been achieved. These range from the single market to the historic transition to a monetary union, which would not have been possible without the option in favour of the method of the vanguard group, from the enlargement to most European countries to the Treaty of Lisbon, whose steps forward – though not decisive – are linked to the involvement, through the Convention, of members of the European and national parliaments. These developments testify, with irrefutable factual evidence, the soundness of the choice made in 1950 to overcome mere intergovernmental cooperation and to include the federal perspective in the European unification policy, in relation to both the institutions and the procedures to establish them. In order to have an appropriate, comprehensive view of the process, I wish to draw on what mentioned before and emphasise that pro-European movements supporting federalism have greatly contributed to these steps forward. Through their continuous, systematic, and pervasive actions, they have kept alive the idea of a European federation and of the participation of the people in its creation, based on the democratic constitution method – an idea that would have been erased from the political agenda without their contribution. Moreover, they have played a fundamental role at a number of crucial moments in the creation of today's Europe. In particular, I wish to

mention: the transformation of the project for a European Defence Community into a plan for a military, political, and economic union on a federal basis (the European Political Community), which failed in 1954 but laid the foundations for the later creation of a European Economic Community; the campaign for the direct election of the European Parliament and for the strengthening of its powers; Spinelli's action in favour of the European Union Treaty, approved by the European Parliament in 1984, which strongly contributed to the drafting of the European Single Act and, more generally, to open the process of reform of European treaties, whose most recent achievement is the Treaty of Lisbon; a steady commitment to the implementation of a single European currency, which has been constant since the 1960s (in this regard, I would like to mention that in 1965 the federalists had some symbolic coins named Euro minted in Bologna!).

All this said, it is a fact that the final goal of the European federation has not been achieved yet and we should now wonder whether Schuman's declaration is still relevant in relation to it. This question must be asked because the validity of the distinction between federation and confederation is being challenged by many, thus denying that the European integration process could or should be aimed towards the creation of a federal state. This stance is often linked to the belief that, within the context of globalisation, the state form is not only objectively in crisis but doomed to be replaced by something else, which however those who challenge the integration progress are not able to define clearly.

Conversely, I believe that the federalist discourse is nowadays still fully relevant. This conviction is based on the following remarks:

- The federal state model, reasonably conceivable as the solution to the European unification issue, shall have characteristics that are original and different from those of the federal systems implemented so far. This is because, for the first time in history, it shall bring together into a federation a set of nation-states that are historically consolidated and a continent characterised by cultural, linguistic, religious, economic, and social pluralism with no equals in the world (which is a major asset that should be protected and supported). Therefore, it shall be a strongly decentralised type of federalism (hence, I believe, more authentic) but in which any form of national veto shall be excluded, despite granting space to qualified majorities. The federal monopoly of legitimate force shall be implemented and the principle of democratic responsibility of supranational political bodies shall be fully applied. These are the necessary requirements to fully overcome the shortcomings of

European integration from the point of view of efficiency and democracy, thus making it irreversible.

- The only valid response to the draining of national sovereignties ensuing from the growing international interdependence, of which globalisation is the most recent development, does not lie in resignedly accepting the decline of the state but rather in extending the scope of the democratic state and in strengthening the tools of democratic participation, made possible thanks to the subsidiarity principle typical of a fully developed federal system. Since the state form is the irreplaceable starting point for the pursuit of the common interest, i.e. for pacific cohabitation, for the protection of liberal-democratic rights, for social solidarity and solidarity to future generations (sustainable development), the great design that should be pursued by all those who, in a steadily more interdependent world, wish to commit themselves to progress and to the very survival of humankind is the gradual and coherently sought creation of a worldwide democratic and federal state. In this perspective, the most urgent issue is completing the construction of the European federal state, because only a Europe that is fully capable of action can play an active and crucial role in a world hanging in the balance between setting up institutions and policies indispensable in order to face a common destiny and catastrophic anarchy. As stated in the Schuman Declaration, the mission of a united and pacified Europe is to provide a fundamental contribution to world peace, which consequentially means endorsing, through example and action, the creation of other continental federations and, at the same time, contributing to the federal unification of the entire world, as declared in the Ventotene Manifesto. The only alternative to this form of development is the triumph of a neo-feudal dispersion of sovereignty and, as a result, of generalised anarchy, which those theorising the new Middle Ages seem willing to accept with irresponsible thoughtlessness.

- Thanks to the progress made, the European integration process has reached a point in which postponing its evolution towards federalism is no longer compatible not only with the advancement but with the very preservation of European integration. On one hand, the monetary unification (the most important objective achieved so far) has led to a point in which it is no longer possible to back up the contradiction that has always characterised the functionalist integration model, linked to indefinitely postponing the implementation of supranational democratic sovereignty. If draining the ability to steer the economic process by means of national economic and social policies is not complemented by the creation of

a European democratic government capable of ensuring economic-social cohesion and the competitiveness of the European economy within the framework of globalisation and, more generally, of overcoming the abnormal discrepancy between the dimension, still fundamentally national, of political-democratic responsibility and the dimension of actual decisions, then the democratic system is doomed to plunge into a fatal crisis. An alarming warning sign of this is the fact that populist, Europhobic, micro-nationalistic, and xenophobic tendencies are gaining more and more ground. On the other hand, a rapid transition to a fully federal union is imposed by the international context, characterised by the irreversible decline of the American hegemony and by the creation of a multi-polar world system – and it is of vital importance to make this federal union structurally cooperative. This means that the European Union must become a producer of global security instead of remaining a mere consumer of security in the shadow of the American umbrella. The creation of supranational democratic and efficient institutions is finally indispensable to face the problems linked to the extension (already implemented and still to be completed) of the Union to central, eastern and Balkan Europe and also to Turkey – which represents a great and imperative challenge for Europe but is doomed to result in devastating consequences if not complemented by the complete overcoming of the limits of functionalist integration.

These are the reasons why it is fully and urgently topical to achieve the ultimate goal – a European Federation – stated in the Schuman Declaration, but it is equally topical to keep in mind the strategy of the vanguard group. Nowadays, this implies two things. On the one hand, it is necessary to implement any possible steps forward within the framework of the Treaty of Lisbon (in particular, those concerning the European economic government and the international role of the European Union), by going ahead together with those who agree to those steps and, consequently, by taking advantage of strengthened cooperation and structured cooperation in the field of defence. On the other hand, and simultaneously, it is necessary to initiate, based on initiatives by those countries that are willing, a transition process towards the European federation. This implies a transfer of sovereignty to the European level in the fields of foreign policy, security, and economy (in their general aspects), with the allocation of financial resources and sufficient armed forces to allow for the ability to act and govern independently; the drafting of a

federal Constitution, providing for a government system structured across several coordinated and independent levels, with a federal executive branch responsible to the parliament and a bicameral legislative branch made up of a chamber of the States and a chamber of the people's representatives; the drafting of the Constitution by a democratic constituent convention and its ratification by the citizens, within a framework that is respectful both of the acquis communautaire and of the wish to join the project at a later stage by those countries that shall decide to do so.

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Redefining a Nation: The Conflict of Identity and Federalism in Iraq

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Abstract

The debate on federalism in Iraq is interrelated with the identity conflict which has dominated Iraqi politics since the regime change in 2003. Federalism was proposed and became constitutional in 2005 as a way to face the inherent crisis in modern Iraq resulting from the lack of a political system through which power could be distributed and the peculiarities of different ethno-sectarian communities could be included. However, federalism has not been clearly defined and there are several concerns about its form, structure and limits. The question whether this federalism will be ethno-sectarian or administrative is very crucial today, and is strongly connected to identity politics and to the conflicting concepts regarding the definition of Iraqi nationalism and identity. This article attempts to locate the debate concerning federalism within that broader debate and to analyse, albeit briefly, the socio-political and ideological implications.

Key-words:

Iraq, federalism, conflict of identity, nation

1. Preliminary Remarks

National identity is one of the most significant issues in Iraq today. Although it comprises salient ideological and cognitive dimensions, it is mainly related to the state formation process and to institutional build-up. This can be felt in the debate that accompanied the last parliamentary election, as had been the case with the previous one.

One could say that Iraqi politics since 2003 have been a story of identity conflict. Whether or not the various Iraqi communities will be able to produce a national narrative which will be sufficiently inclusive is one of the main questions about Iraq's future. Related to this ideological conflict, there are also constitutional disputes about the type of political system and, particularly, the form of federalism more likely to be accepted by the majority of Iraqis. While the constitution approved in the 2005 referendum clearly stated that Iraq is a federal state, the definition of this federalism is still subject to different interpretations. Therefore, it is valid to argue that defining Iraq's federalism will help in redefining Iraqi nationalism. This is mainly a power conflict, as Breuilly describes the formation of nationalism (1993). "Nationalism is, above and beyond all else, about politics and politics is about power. Power, in the modern world, is principally about control of the state. The central task is to relate nationalism to the objectives of obtaining and using state power" (ibid:1).

2. The geopolitics of conflict

The conflict in Iraq is not simply a conflict among social groups with different heritages and reciprocal complaints, but rather an emblematic example of the complexity of identity politics in this part of the world. The different ethno-sectarian groups in Iraq handled the American toppling of Saddam's regime with different degrees of relief or rejection and often with mixed feelings. Hidden divisions and hatreds have been released after long years of silence in what the Iraqi author Kanan Makiya called 'the republic of fear'. But there were no quick and effective solutions

available to help deal with them. Under the former regimes, ethno-sectarian groups were practically divided into advantaged and disadvantaged groups. Therefore, they had different narratives about the past, a different understanding of the present and different perspectives about the future. The new 'democratic' political system is not yet based on a real "national" narrative that is appealing to the different sub-national identities. The term "National" has not had a consent-based meaning in Iraq because of rooted suspicions, but also because of the different connotations related to the word "nation" (*Umma*) in the Islamic-Arab tradition. While linguistically it means any collectivity, its modern use has rendered it a synonym for cross-national affiliations (e.g. Pan-Arabism and Pan-Islamism).

The concept of 'Nation' has always been a controversial issue in Iraq, but also one inherent in the foundations on which 'modern Iraq' was established. Due to the lack of 'consensus' regarding this 'nation', in a society that consists of three main socio-cultural groups – Kurds, Arab Sunnis and Arab Shi'ates, in addition to several ethnic, religious and linguistic minorities (e.g. Turkmen, Christians, Sabists, Yazidizts, and Shabaks) – identity issues have become an element of almost all prevailing ideologies and political choices. In no less than 40 years of the rule of the Baath party with its Pan-Arab ideology, the idea of an 'Iraqi nation' has been formally denied. Iraq has been ideologically rendered a 'phase' within a continuous 'struggle' to establish the Arab nation. The narrative of Arab unity has been socialized and transmitted to the new generations, thereby alienating the non-Arab Iraqis, but also the non-Sunni Arabs. The Shi'ate version of history was seen as less Arabic and more compromising with non-Arab communities (*Shoubiya*) (*For further analysis see, Davis 2005*). The official predominance of the Arab nation narrative reflected the political hegemony of Sunni Arabs in modern Iraq. This paradoxical official denial of 'Iraq's existence' as a natural 'nation' and, at the same time, the practical handling of its 'existence' as an established state, cannot be detached from the nature of the identity conflict in the 'Arab world' and from the geo-political and geo-cultural realities of Iraq's surroundings. Located at the center of three historical 'cultural spheres', (Arab, Turkish, and Persian), Iraq has been rendered a field in which these powers clash. Iraq has been either an ally for one against

the other (e.g. Iraq's Arab-backed war against Iran), or an open field of their conflict (to a certain extent, the current situation in Iraq).

The regime change in Iraq was a step towards reconstructing the socio-political and geo-political status quo in the region. It has unleashed an intense power conflict which has been accompanied, and even intensified, by ideological confrontation and its focus on the question of identity in Iraq. The Arab Sunni hegemony has been challenged by this shift in an unprecedented way, thereby leading to an open regional conflict in which Iraq's future national identity was the main target. The power vacuum resulting from the collapse of Saddam's regime and the traditional structure of the Iraqi state motivated the regional powers to get directly involved in its unresolved dilemmas of nation building. This has been reflected in the last electoral competition in which some political coalitions were supported, even funded, by Iran and Saudi Arabia. The identity conflict was also revealed by the rise of marginalized identities and their struggles for self-realization and self-promotion against the dominating narratives of identity. National, religious and ethnic minorities are being made more aggressive in their demands for social, political and cultural rights.

Today this regional conflict can be felt in the way that Iraqi politics are managed. Some Shi'a groups are sponsored and funded by Iranians, and some Sunni groups are sponsored and funded by Saudi Arabia. To a large extent, as recent political tension between Iraq and Syria demonstrated, the clash of regional interests became more prominent before the last election and on the verge of American withdrawal. This is a political conflict about influence and hegemony which strive to affect the future definition of Iraq. As long as the identity of the 'new Iraq' – hence its political system – are internally challenged and politically uncertain, it is unlikely that the regional powers will stop their interventions. This goes beyond the simple agenda of resisting 'democracy' by regional authoritarian regimes. It is more about deciding what political meaning and attitude Iraq is going to adopt on the regional map. And if the country is unable to survive these challenges, regional powers intend to fill the vacuum and establish spheres of influence. That is why some analysts clearly argued that the solution in Iraq must be a 'regional solution' (Allawi 2007). Moreover, this kind of negotiation became even more probable after the last election in which the Iraqi Sunnis

actively took part. It was a step towards recognizing the new political system and gaining leverage in Iraqi politics after a long time of hesitation and neglect. It is still to be seen whether the new political landscape will be contained within a power-sharing compromise and each party – internal or external – will accept its share of power, or whether there will be an unsatisfied actor who will be ready to go beyond verbal opposition and to resort to violence. It is a process that will involve both regional powers and Iraqi parties.

3. Defining Federalism

McGary and O'leary (2007) presented an important analysis of the content of identity politics in post-war Iraq, describing the constitutional conflict that takes place between the 'integrationists', who seek a single all-embracing public identity through integration, and the 'consociationists', who try to accommodate multiple public identities through constitutional and institutional arrangements and guarantees. The Sunni groups in Iraq are nostalgic about the strong centralized government which controlled the oil revenue and in which the Sunni tribes dominated the main bodies. By appealing to pan-Arab and anti-Iranian sentiments, they implicitly seek to a form a 'national' identity through a concept of nation which compensates their numerical weakness (20% of the population). They aspire to maintain a special status as an extension of the Arab-Sunni majority in the Muslim world. As demonstrated by the results of the constitutional referendum, the Arab Sunnis are skeptical about federalism. They think that it is basically aimed at impoverishing and marginalizing them, given that the oil fields are located in the Shi'a and Kurdish areas. This attitude is also supported, if not dominated, by the prevailing idea that 'federalism' means partition, an implicit betrayal of the 'imagined Iraqi community'. However, with more Sunni groups participating in the political process and adopting a more realistic approach, there is a measure of acceptance of federalism in the Arab and the Kurdish regions. A similar perspective has been adopted by the Al-Iraqiya coalition which is led by Shi'a secular Ayad Allawi, and consists mainly of Sunni pan-Arabist groups, a formula sponsored by the Arab Sunni countries and secured 91 out of 325 seats in the coming parliament.

However, the destiny of Kirkuk, the multiethnic city which comprises 15% of Iraqi oil and which Kurds seek to annex to their region, will determine the Sunni attitude towards the Kurdish region. Kirkuk is part of what are now called 'the disputed areas', which are mainly the areas where Kurdish communities meet or mix with Sunni and Turkmen communities. Some Sunni parties, mainly the Al-Nujaifi group in Mosul, built their political career on the strong rejection of Kurdish 'territorial ambitions'. It is still to be seen how the Kurds will react to this attitude in the future, while pressing to implement a constitutional article allowing a referendum to decide Kirkuk's status. It is also important to see how the Sunni pan-Arabists will accommodate their attitude with their ambitions to have more power in Baghdad, which might require siding with Kurds in order to diminish the Shi'at weight.

The Shi'ates, although they are harmonious in their public support for federalism, are increasingly divided into two camps. The first is led by the Iran-backed Supreme Islamic Council – SIC – which prefers, even though non-explicitly, an ethno-sectarian federal system where a Shi'ate region will be more autonomous and the centre will be less dominant. Such a view is strongly governed by the old fears of Sunni control over the centre and the consequent marginalization of Shi'ates. Accordingly, the best guarantee for the future of the Shi'ates is establishing an autonomous region for them. However, this attitude has been faced with suspicion among other Shi'ate groups, especially Muqtada Alsadr's movement which considered it an attempt by the SIC to dominate Shi'ate politics. Recently, with the decline of the SIC's influence after its weak performance in the provincial and parliamentary elections, this issue is no longer at the top of the Shi'ate political agenda. The current Prime Minister, Nuri Al-Maliki, successfully led a new coalition which supports a political system that gives more power to the central government in order to control resources and security. The positive results achieved by Al-Maliki in the provincial and parliamentary elections, which made his coalition the strongest Shi'ate group, promoted his attitude and put the other Shi'ate groups in a defensive position.

This was a non-favorable development for Kurds who are considered, understandably, the main supporters of federalism. Based on rooted memories of actual war with the central governments, they made it clear that their voluntarist Iraqiness is

conditional to the maintenance of a federal system. However, the model of federalism they have obliged to in the last years was one reason why federalism became less attractive to others. Many Iraqis argue that the state of Iraq has no control whatsoever over the Kurdish territory. The government of Kurdistan controls the security, resources, and even the foreign policy of its own region. It disputed with the central government the jurisdiction on natural resources and the issue of 'disputed areas'. While many think that challenging these gains in Kurdistan is unexpected in the foreseen future, the conflict regarding Kirkuk will be one of the main challenges in redefining the political system and, hence, the concept of nation in Iraq.

4. Re-constructing the National Narrative

Iraqi identity politics reflect a power conflict and represent the challenges of state rebuilding where the central identity is less prominent than that of the periphery. However, it is not only about creating a new narrative, but also about managing that power conflict. Failure to have a sufficient share of resources and power will lead the disadvantaged groups to adopt a kind of identification that is confrontational and, sometimes, violent. To some extent, this was the case with Shii'as and Kurds in pre-2003 Iraq, and Sunnis in post-2003 Iraq. However, this cannot be detached from self-created narratives about 'our' position within the whole. Using the logic of the ethnic security dilemma, Steven David argued that hostility is generated if in-group members fear the intentions of the out-group. The emotional fervor generated by in-group fears turns stereotypes into antipathies (Schuessler 2003). In a country that depends on oil revenue for its survival, the central government traditionally ended up strongly marginalizing the provinces and attacking their cultural characteristics. The central government controls apparatuses of 'legitimate' violence, as well as the institutions of socialization like public schools and the mass media. In other words, it can communicate a national narrative that reflects the interests of the governing elite. Therefore, federalism is not only about institutional arrangements and regional borders, but also about the ways in which resources are shared and distributed. On the other hand, as is the case with all oil- producing countries, it is difficult to ignore the tendency of the 'national government' to strengthen its grip and construct the 'national

identity'. The main challenge is to accommodate both inclinations: sharing and uniting. Therefore, it is important to find a middle ground on which a new definition of unity must be based. This unity must be inclusive, sensitive to diversity, and non hegemonic.

With the different perspectives about what Iraq is, the main challenge is to create a widely acceptable definition of 'nation'. Failure to do so will leave Iraq with two choices: the return to a dictatorship legitimized by an enforced and exclusive national narrative, or partition. Geo-political and geo-cultural factors may impede such a 'consensus' because of the influence exerted by external powers. However, these very effects may produce an opposite pressure if they conclude that the existence of Iraq itself is important to avoid a consuming and endless conflict. Iraq can be the buffer zone among competitors and its existence might be the only acceptable solution. Furthermore, the rising of ethno-sectarian identities does not abolish the fact that the majority of the people are tending to identify themselves as Iraqi citizens rather than prioritizing their ethno-sectarian identity. The Kurds might be the only exception because of the peculiarities of their 'issue' and history. However, this argument needs to be re-examined and elaborated.

Iraq's story since April 2003 is mainly about the deconstruction of the already shaky pillars of the 'nation'. Therefore the most important element of nation building is to revive or produce a national narrative which is stronger than ever, and which can be accepted by the nation's components. Nation building is a process of institutional, socio-political and ideological dimensions, and no viable state can be found without a credible, but also sociable and appealing, narrative. The questions are: how credible is it? And how effectively can it be communicated? Credibility here is less about the 'truthfulness' of this narrative and more about its reliability (*Smith 1999*). The reconstruction of national identity is the main challenge towards re-inventing a viable Iraqi nation. Many experiences of nation building have emanated from internal conflicts and the hegemony of one narrative. There were always some elements of compulsivity and manipulation in imposing or communicating the nation's narrative. This process will be influenced by the development of power conflict. While the process of nation building will be profoundly determined by the ability to strengthen the new institutions and promote the state's structures, the inclusiveness of the national narrative will strongly determine the future of Iraq. The last election was an important step, but not the last one, in demonstrating whether the 'new Iraq' will be any different from the old one.

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The new "Estatutos de autonomía" in Spain: a brief overview of the literature

by

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Abstract

In the latest years, the Spanish constitutional system has been characterized by a proliferation of sub-national fundamental charters ("*Estatutos de las Comunidades Autónomas*", hereinafter CAs): in fact, many CAs are currently exploring the possibility to amend their basic charters.
This short review article aims at providing a brief overview of the recent developments in this field occurred in Spain

Key-words:

Spain, Spanish regionalism, *Estatutos de las Comunidades Autónomas*

1. Preliminary remarks[I]

In the latest years, the Spanish constitutional system has been characterized by a proliferation of sub-national fundamental charters ("*Estatutos de las Comunidades Autónomas*", hereinafter CAs): in fact, many CAs are currently exploring the possibility to amend their basic charters[II].

This short review article aims at providing a brief overview of the recent developments in this field occurred in Spain.

When looking at this complex phenomenon, one could discern at least four main issues:

1. The reasons for this new process of *autonomía estatutaria*;
2. The content of the new proposals of *Estatutos*;
3. The nature of the principles and the provisions on local identities contained in the *Estatutos*;
4. The relationship between the new *Estatutos* and the Spanish Constitution.

I am going to deal with these four issues in this article, attempting to summarize (a part of) the massive literature appeared in these years.

[II] The final version of this article was submitted and accepted in May 2009.

[II] For a general reflection on the subject, see G.J. Ruiz-Rico Ruiz *La reforma de los Estatutos de Autonomía : actas del IV Congreso de la Asociación de Constitucionalistas de España*, Tirant lo Blanch, 2006; L.Ortega Alvarez "Los nuevos estatutos de autonomía", in *Cuadernos de derecho local*, n. 16, 2008, 102-113; I. Lasagabaster Herrarte, "La reforma de los estatutos de autonomía: una reflexión sobre su teoría y su práctica actuales", *Revista catalana de dret públic*, n. 31, 2005, 15-56; M.A.García Herrera- J. M. Vidal Beltrán- J. Sevilla Segura (eds), *El estado autonómico: integración, solidaridad, diversidad*, Vol. I and II, Colex, Madrid, 2005; I. M. Delgado-L.Ortega Alvarez (eds), "La reforma del Estado Autonómico", CEPC, Madrid, 2005; F.J.García Fernández, "La reforma de los Estatutos de Autonomía y la Constitución", *Temas para el debate*, 126, 2005, 25-28; L. Martín Rebollo, Sobre los estatutos de autonomía y sus pretendidas reformas: algunos recordatorios y otras reflexiones, in La reforma de los Estatutos de autonomía, 2003, Junta de Castilla y León, 33-68; M.A. García Herrera- J. M. Vidal Beltrán- J. Sevilla Segura (ed.). El estado autonómico : integración, solidaridad, diversidad, Colex, Vol. 2, 2005.

2. The Constitutional background

Although the Spanish Constitution ("CE") recognizes the State unity as a fundamental value, rt. 2 also "*guarantees the right to autonomy of the nationalities and regions which make it up, and the solidarity among all of them*". This is the starting provision to understand the phenomenon of *autonomía*[III]. The competences of the CAs are not listed in the Constitution, but in the *Estatutos*; at the same time, there is not a list of CAs in the CE.

There are relatively few constitutional provisions devoted to the internal organization of the CAs (Articles 67, c.1; Art. 69, c.5; 87, c.2; 147, c.2, lett. C); Art. 148, c. 1, n. 1; 152, c. 1; 153; 155; 161, c. 2 and 162, c. 1, lett.a)[IV].

Together with these provisions, there are many non-constitutional sources governing the process of *autonomía* (this phenomenon is called by scholars "de-constitutionalization"[V]). At the same time, the recalled constitutional provisions set a strong limit to the will of the subnational legislators to modify the *Estatutos*.

According to a reconstruction by Reyes[VI], it is possible to identify three groups of relevant constitutional provisions:

1. provisions which ensure the existence of such institutions of self-government and acknowledge competences in terms of self-organization. Art. 147, c. 2, lett. C and Art. 148, c. 1 CE, belong to such a group. The former reads:
2.

"The Statutes of autonomy must contain:

a) The name of the Community which best corresponds to its historical identity.

b) The delimitation of its territory.

c) The name, organization, and seat of its own autonomous institutions.

d) The competences assumed within the framework of the Constitution and the bases for the transfer of the corresponding services to them".

III For a general overview on the CAs in Spain, see: A.Sánchez Navarro, "30 años de Comunidades Autónomas", in *Diario La Ley*, 2008

IV M.Aragón Reyes, "L'organizzazione istituzionale delle Comunità autonome", in *Diritto Pubblico Comparato ed Europeo*, n.3, 2007, 1156 – 1170, 1156.

V M. Aragón Reyes, "La construcción del Estado autonómico", in *Revista general de derecho constitucional*, 2006, 1 ff.

VI M.Aragón Reyes, "L'organizzazione cit, 1156 – 1157.

The latter adds that the CAs may assume competences in, among other things, the organization of their own institutions of self-government. This provision means that only subnational norms (the norms of the CAs) may implement the provisions contained in the *Estatutos* regarding the institutional organization of the CA[VII]. This expressly implies a reserved jurisdiction for the subnational source in this field.

3. Provisions regarding the general organization of the CA, whichever its institutional structure. This is the case of Art. 1, c.1, according to which: "*Spain constitutes itself into a social and democratic state of law which advocates liberty, justice, equality, and political pluralism as the superior values of its legal order*". This article forbids possible non-democratic evolutions for all the parts of the State, including the subnational entities, especially with regard to the pluralistic and democratic structure they must have.

4. Provisions concerning the form of government: we are referring to Articles 67, c.1[VIII]; 69, c. 5[IX]; 87, c. 2[X]; 152, c.1[XI]; 153[XII]; 155[XIII]; 162. c.1, lett. a)[XIV]. Among these, the

VII M.Aragón Reyes, "L'organizzazione cit, 1156

VIII "*(1) No one may be a member of the two Chambers simultaneously nor be a member of an Autonomous Community Assembly and a Deputy to the House of Representatives at the same time*".

IX "*(5) The Autonomous Communities shall also designate one senator and one additional senator for each million inhabitants in their respective territories. The designation shall be made by the legislative assembly, or, in its absence, by the higher collective body of the Autonomous Community pursuant to the provisions of the Statutes, which in any case, shall insure adequate proportional representation*".

X "*(2) The Assemblies of the Autonomous Communities may request the Government to adopt a bill or send to the Board of the House of Representatives a proposal of law, delegating a maximum of three members of their Assembly to that Chamber to defend it*".

XI "*(1) In the Statutes passed by means of the procedure referred to in the foregoing article, the institutional autonomous organization shall be based on a legislative assembly elected by universal suffrage in accordance with a system of proportional representation which assures, moreover, the representation of the various areas of the territory; a Governing Council with executive and administrative functions, and a President elected by the Assembly from among its members and appointed by the King, to whom shall be responsible for directing the Governing Council, which constitutes the supreme representation of the respective Community as well as the State's ordinary representation in the latter. The President and the members of the Governing Council shall be politically responsible before the Assembly.*

A High Court of Justice, without prejudice to the jurisdiction exercised by the Supreme Court, shall be at the head of the Judiciary within the territorial area of the Autonomous Community. The statutes of the Autonomous Communities shall establish the circumstances and manner in which they will participate in the organization of the judicial demarcations of the territory. All of this must be in conformity with the provisions of the organic law on judicial power and compatible with its unity and independence. Without prejudice to the provisions of Article 123, successive appeals shall, where applicable, be lodged with judicial bodies located in the same territory of the Autonomous Community as that in which the competent court of the first instance is located".

XII "*Control over the activity of the organs of the Autonomous Communities shall be exercised by*

a) the Constitutional Court, in matters relative to the constitutionality of its normative provisions having the force of law; b) the Government, after the handing down by the Council of State of its opinion, regarding the exercise of the delegated

most relevant provision is represented by Art. 152, c.1, which requires the existence of a legislative Assembly to be elected by universal suffrage and "*in accordance with a system of proportional representation which assures, moreover, the representation of the various areas of the territory*". Alongside this legislative Assembly, there should be a "*Governing Council with executive and administrative functions, and a President elected by the Assembly from among its members and appointed by the King*"; finally, "*A High Court of Justice, without prejudice to the jurisdiction exercised by the Supreme Court, shall be at the head of the Judiciary within the territorial area of the Autonomous Community*". According to the Spanish Constitution, there are two ways to obtain the *autonomía.* Art. 152 requires a Parliamentary regime for those CAs aspiring to an immediate autonomy[XV]. The second way to get the *autonomía* is governed by Art. 143 CE[XVI]. Special

functions referred to in Article 150 (2); c) the jurisdiction in administrative litigation, with regard to autonomous administration and its regulatory norms;

d) the Court of Accounts, with regard to economic and budgetary matters".

XIII "*(1) If an Autonomous Community does not fulfill the obligations imposed upon it by the Constitution or other laws, or should act in a manner seriously prejudicing the general interest of Spain, the Government, after lodging a complaint with the President of the Autonomous Community and failing to receive satisfaction therefore, may, following approval granted by an absolute majority of the Senate, adopt the means necessary in order to oblige the latter forcibly to meet said obligations, or in order to protect the above-mentioned general interest.*

(2) With a view to implementing the measures provided for in the foregoing paragraph, the Government may give instructions to all the authorities of the Autonomous Communities".

XIV *"(1) The following are eligible to: a) lodge an appeal of unconstitutionality: the President of the Government, the Defender of the People, fifty Deputies, fifty Senators, the executive corporate bodies of the Self-Governing Communities and, when applicable, their Assemblies*";

XV See Art. 151: "*1) It shall not be necessary to wait for the five-year period referred to in Article 148 (2) to elapse when the initiative for the autonomous process is agreed upon within the time limit specified in Article 143 (2), not only by the corresponding Provincial Deputations or inter-island bodies, but also by three-quarters of the Municipalities of each province concerned, representing at least the majority of the electorate of each one, and said initiative is ratified by means of a referendum by the affirmative vote of the absolute majority of the electors in each province, under the terms to be established by an organic law.*

(2) In the case provided for in the foregoing paragraph, the procedure for drafting the statute shall be as follows:

1) The Government shall summon all the Deputies and Senators elected in the electoral districts within the territorial area seeking self-government in order to constitute themselves into an Assembly for the sole purpose of drawing up the corresponding draft statute for self-government, to be adopted by the absolute majority of its members.

2) Once the draft statute has been passed by the assembly, it shall be remitted to the Constitutional Commission of the House of Representatives which shall examine it within the time of two months with the concurrence and assistance of a delegation from the Assembly which has proposed it, in order to decide in common agreement upon its definitive formulation.

3) If such an agreement is reached, the resulting text shall be submitted in a referendum of the electoral corps of the provinces within the territorial area to be covered by the proposed statute.

4) If the draft statute is approved in each province by the majority of validly cast votes, it shall be referred to the Parliament. Both Chambers, in plenary assembly, shall decide upon the text by means of a vote of ratification. Once the statute has been approved, the King shall sanction it and shall promulgate it as law.

5) If the agreement referred to in Subparagraph 2) is not reached, the draft statute shall be treated like a draft law in the Parliament. The text approved by them shall be submitted in a referendum of the electoral corps of the provinces within the territorial area to be covered by the draft statute. In the event that it is passed by the majority of the validly cast votes in each province, it shall be promulgated under the terms outlined in the foregoing subparagraph.

regimes aiming at simplifying the procedure of autonomía listed at Articles 143 and 151 are provided at Art. I and II of the Transitional Provisions[XVII]. Finally, Art. 144 provides that: "*The Parliament, by means of an organic law, may for reasons of national interest: a) authorize the establishment of an Autonomous Community when its territorial area does not exceed that of a province and does not have the conditions set forth in Article 143; b) authorize or accord, depending on the case, a statute of autonomy for territories which are not integrated into the provincial organization; and c) substitute the initiative of the local corporations to which Article 143 (2) refers*".

3. The new *Estatutos* and the reasons for such a process

The new process of reforms started in 2004 after the election of the first Zapatero government[XVIII].

The scholars identified at least four groups of factors pushing for the reform[XIX]:

1. the CAs' progressive loss of competences or, better, the progressive transformation of the Spanish system into a system of executive federalism: the *autonomía* of the CAs has just an administrative character, while the political responsibility of the biggest choices

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(3) In the cases described in Subparagraphs 4) and 5) of the foregoing paragraph, failure to pass the draft statute by one or several of the provinces shall not impede the constitution of the remaining provinces into an Autonomous Community in the form as shall be established by the organic law envisaged in Paragraph (1)".

XVI *"(1) In the exercise of the right to autonomy recognized in Article 2, bordering provinces with common historical, cultural, and economic characteristics, the island territories, and the provinces with a historical regional unity may accede to self-government and constitute themselves into autonomous communities in accordance with the provisions of that Title and the respective statutes.*

(2) The initiative for the autonomous process belongs to all the interested deputations or to the pertinent inter-island body and to two-thirds of the municipalities whose population represents at least the majority of the electorate of each province or island. These requirements must be fulfilled within a period of six months from the first agreement adopted on the subject by one of the interested local corporations.

(3) The initiative, in case it does not prosper, can only be repeated after the passage of five years".

XVII Art. 1 TP: "*In the territories with a provisional regime of Autonomy, their higher collegiate organs may, by means of an agreement adopted by an absolute majority of their members, substitute for the initiative which, in Article 143 (2) is attributed to the Provincial Councils or corresponding inter-island organs*".

Art. 2 TP: "*The territories which in the past have, by plebiscite, approved draft Statutes of Autonomy, and which, at the time of the promulgation of this Constitution, have provisional regimes of autonomy, may proceed immediately in the manner provided in Article 148 (2), when agreement thereon is reached by an absolute majority of their pre-autonomous higher collegiate organs, and the Government is duly informed. The draft statutes shall be drawn up in accordance with the provisions of Article 151 (2) when so requested by the pre-autonomous collegiate organ*".

XVIII For a chronicle of the process, see the special issue of the *Revista general de derecho constitucional*, n 1, 2006.

XIX C.Viver Pi-Sunyer, "La riforma dello Statuto della Comunità autonoma di Catalogna: principali novità e problemi di costituzionalità", in *Diritto e società*, 2008, 315 – 349, 317.

belongs to the State. This phenomenon may be explained in several ways: the actual progressive loss of exclusivity of the regional formally-exclusive competences; the hidden expansion of the basic competences of the State, thanks to general clauses like the one included in Art. 149.1.13 regarding the general principles of the economic order[XX]; the use of the State spending power also in the ambits of CA's jurisdiction; the exclusive implementation of the EC norms through State laws;

2 The big issues of the means of regional funding and of the system of territorial equalization: this reason applies above all to *Catalunya*, which contributes tax money to the State more than what it receives from the State in terms of State investments or available resources[XXI].

3 The lack or the non-functioning of the mechanisms of cooperation and participation at both the horizontal and the vertical levels;

4 The so-called "identity questions", related to the acknowledgment of national realities different from that of the Spanish nation.

In order to deal with these questions, there were three possible options: a new interpretation of the constitutional provisions regarding the *autonomía* of the CAs (the same applied to the *Estatutos* of the CAs); a constitutional reform; the preparation of a new text to be discussed and approved by the State Parliament, which is the way the CAs chose.

Currently, six CAs approved new *Estatutos*: Comunidad Valenciana (*ley orgánica,* April 10, 2006, n. 1), Catalunya (*ley orgánica,* July 19, 2006, n. 6)[XXII], Baleares (*ley orgánica,*

XX "*1) The State holds exclusive competence over the following matters: ...13) bases and coordination of general planning and economic activity;*".

XXI M. Medina Guerrero, "Algunas consideraciones sobre la eventual reforma del sistema de financiación", in M.J. Terol Becerra (eds.), *El Estado autónomico in fieri*, *cit*., 197 ff.; J. Ramos Prieto, "La distribución de las competencias de gestión, recaudación, inspección y revisión en materia tributaria y la reforma de los Estatutos de Autonomía", Revista de estudios regionales, n. 78, 2007, 365-386

XXII On this *Estatuto,* see J.M. Castellà Andreu, *La función constitucional del estatuto de autonomía de Cataluña*, Institut d'Estudies Autonomics, Barcelona 2004; R.L. Blanco Valdès, "Lo Statuto catalano: testo e pre-testi", in *Quaderni costituzionali*, 2006, 677 ff.; I. Ruggiu, "Il nuovo Statuto catalano", in *Le Regioni*, 2007, 81 ff.; G.Duranti, "Asimmetria e modernizzazione del federalismo in Europa: il caso della riforma dello Statuto catalano", *Rassegna parlamentare*, 2008, 249 – 279; E.Aja, "La riforma dello Statuto catalano del 2006", *Diritto Pubblico Comparato ed Europeo*, 2007, 1133 – 1154; M.Carrillo, "Il nuovo statuto di autonomia della Catalogna", *Giurisprudenza costituzionale*, 2007, 3297 – 3321; C. Viver Pi-Sunyer, "La riforma cit"; G.Poggeschi, "La definitiva approvazione del nuovo Statuto di autonomia della Catalogna. Un passo in avanti verso una maggiore asimmetria dell'Estado autonomico", *Diritto Pubblico Comparato ed Europeo*, 006 fasc. 3, 1340 – 1352; J.A. González Casanova "Reforma del estatuto de Cataluña y Estado federal", *Revista de fomento social*, n. 241, 2006, 57-75

February 28, 2007, n. 1)[XXIII], Andalucía (*ley orgánica,* March 19, 2007, n. 2)[XXIV], Aragón (*ley orgánica,* April 20, 2007, n. 5), Castilla y León (*ley orgánica,* November 30, 2007, n. 14); other CAs, such as Castilla-La Mancha, are attempting to revise their *Estatutos*[XXV]. There was also a failed attempt to approve a new *Estatuto* in the Pais Vasco[XXVI].

All the *Estatutos* present important novelties, both substantially and formally: they are longer than in the past; they present a long list of "regional rights" (above all social ones); they re-write the list of competences of the *Estatutos*; sometimes new legal sources are provided for (it is the case of the legislative decrees); they enlarge the fiscal and financial autonomy; they contain provisions regarding the judiciary power; they revise the discipline governing the cooperative relations with the State and the EU; they contain some provisions devoted to the issue of identity.

4. The nature of the principles and provisions on identity

As we saw, all the *Estatutos* (except for the draft *Estatuto* of Castilla la Mancha, which, on the contrary, presents itself as averse to the identity language) contain provisions on rights and principles. Scholars began to reflect on the nature of such provisions, reaching conclusions similar to those present in the Italian debate[XXVII]. It is a relatively new question, since the old texts were silent on these points[XXVIII].

The phenomenon of re-writing the *Estatutos* has been carried out mainly through two main means: the Preambles and the "self- definition" contained in the *Estatutos*.

XXIII On this *Estatuto,* see: J. Oliver Araujo, V.J. Calafell Ferrà, *Las Islas baleares: una comunidad autonoma in fieri,* in *El Estado autonòmico in fieri*, cit., 215 ff.

XXIV G. Ruìz -Rico Ruìz, "Una primera diagnosis del documento de bases para la reforma del Estatuto de Andalucìa, in M.J. Terol Becerra (eds.), *El Estado autònomico in fieri. La reforma de los Estatutos de Autonomía*, Sevilla, 2005, 323 ff.

XXV For an overview, see http://www.aelpa.org/observatorio.htm

XXVI E. Vergala Foruria, "La reforma Ibarretxe: un autèntica ruptura estatutaria", in M.J. Terol Becerra (ed.), *El Estado autònomico in fieri*, cit., 401 ff.. See the text available at: www.nuevoestatutodeeuskadi.net

XXVII For a comparison, see: A.Mastromarino-J.M. Castella' Andreu (eds.), *Esperienze di regionalismo differenziato*, Giuffrè, Milano, 2009..

XXVIII R. Maluenda Verdù, "La reforma del Estatut d'autonomia: una necesidad identitaria", in V. Garrido Mayol (ed), *Instituciones politicas de la Comunidad valenciana*, Valencia, 1999, 245 ff.; I. Ruggiu, "Testi giuridici e identità.

Il caso dei nuovi Statuti spagnoli", 2/2007, 133 ff; A.Mastromarino, "A margine della proposta per la revisione dello statuto catalano in tema di nazione e nazionalità spagnole", in *Diritto Pubblico Comparato ed Europeo*, 2005, 1577 - 1584.

With regard to the former, they contain many references to the old-time Reigns which were established in their territories before the Spanish unification or before the latest constituent phase[XXIX]; at the same time, many "*derechos forales*"[XXX] or traditions[XXXI] are recalled and one of the aims of these *Estatutos* consists in the attempt to give them new life in the current age[XXXII].

With regard to the latter, formulas like nation[XXXIII], nationality, historical nationality, national identity, historical community[XXXIV] abound, and many provisions are devoted to linguistic idioms[XXXV].

There is another element characterizing such a phenomenon: the diffuse reference to folklore elements or local personalities, images, idioms, dances (*flamenco*)[XXXVI,] and to all

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XXIX See the Estatuto of the Catalunya: http://www.pedrojhernando.com/aelpa2007/informacion/eac_es_20061116.pdf. From the Preamble: "*El pueblo de Cataluña ha mantenido a lo largo de los siglos una vocación constante de autogobierno, encarnada en instituciones propias como la Generalitat –que fue creada en 1359 en las Cortes de Cervera– y en un ordenamiento jurídico específico recogido, entre otras recopilaciones de normas, en las Constitucions i altres drets de Catalunya. Después de 1714, han sido varios los intentos de recuperación de las instituciones de autogobierno. En este itinerario histórico constituyen hitos destacados, entre otros, la Mancomunidad de 1914, la recuperación de la Generalitat con el Estatuto de 1932, su restablecimiento en 1977 y el Estatuto de 1979, nacido con la democracia, la Constitución de 1978 y el Estado de las autonomías*".

See also the Estatuto de Andalucía http://www.pedrojhernando.com/aelpa2007/informacion/eac_es_20061116.pdf: "*El primer texto que plasma la voluntad política de que Andalucía se constituya como entidad política con capacidad de autogobierno es la Constitución Federal Andaluza, redactada en Antequera en 1883. En la Asamblea de Ronda de 1918 fueron aprobados la bandera y el escudo andaluces*".

XXX See Art. 4, c. 4, Estatuto of Comunidad Valenciana (http://www.pedrojhernando.com/aelpa2007/informacion/ESTATUTOCV.pdf).

XXXI Art. 5 Estatuto of Catalunya: "*El autogobierno de Cataluña se fundamenta también en los derechos históricos del pueblo catalán, en sus instituciones seculares y en la tradición jurídica catalana*".

XXXII F. Rey Martìnez, "Sentido y alcance del concepto de "derechos històricos" en la constituciòn y en los estatutos de autonomía", in *La reforma de los Estatutos de autonomía. Revista juridica de Castilla y Leòn*, 2005, 181 ff.

XXXIII See, again, the Preamble of Catalunya.

XXXIV On this phenomenon, see: E. Sejas Villadangos, "Estado, soberanìa, naciòn y nacionalidades, demasiados factores para una sola ecuaciòn. Revisiòn de estas categorìas a la luz de las reformas constitucional y estatutarias en España", in "La reforma de los Estatutos de Autonomía", special issue *Revista juridica de Castilla y Leòn*, Valladolid, 2003, 211 ff.; R. Blanco Valdès, *Nacionalidades historicas y regiones sin historia: a proposito de la obsesiòn rutinaria*, Madrid, 2005.

XXXV Art. 6 from the Estatuto of Catalunya, where both Catalan and Castilian are conceived of as official languages of the CA: "*1. La lengua propia de Cataluña es el catalán. Como tal, el catalán es la lengua de uso normal y preferente de las Administraciones públicas y de los medios de comunicación públicos de Cataluña, y es también la lengua normalmente utilizada como vehicular y de aprendizaje en la enseñanza.*

2. El catalán es la lengua oficial de Cataluña. También lo es el castellano, que es la lengua oficial del Estado español". See also the Estatuto of Comunidad Valenciana at the Preamble with regard to the "*lengua valenciana*".

XXXVI See Art. 68 of the Estatuto of Andalucía: "*Corresponde asimismo a la Comunidad Autónoma la competencia exclusiva en materia de conocimiento, conservación, investigación, formación, promoción y difusión del flamenco como elemento singular del patrimonio cultural andaluz*".

those elements which the literature has brought back under the umbrella of *hechos diferenciales* ("differential or distinguishing facts")[XXXVII].

Other two categories of tools devised by the CAs in this process need to be mentioned: new collective rights are claimed, and new competences for the CAs, conceived as functional to their protection, are requested[XXXVIII].

Going on in analyzing the means used by the CAs to promote their peculiarities, one could point out the provisions devoted to the symbols[XXXIX] of the CAs: regional feasts, flags, monuments, anthems.

Scholars have profusely analyzed such provisions, emphasizing their ambiguity, their dangerousness but, above all, their rhetorical nature. Other scholars pointed out the reasons behind the language of identity: the necessity to gain new competences[XL] (as we saw, alongside the recognition of new collective rights there is the request of new competences to protect them) and, as a consequence, the claim of new funds, according to the logic "no money, no competences".

The linguistic[XLI,] cultural and local peculiarities are thus the grounds to claim new funds[XLII].

XXXVII See the Estatuto of the Balears about the insularity of the Region as a peculiar fact of the Community: Art. 3- "1. *El Estatuto ampara la insularidad del territorio de la Comunidad Autónoma como hecho diferencial y merecedor de protección especial*". (http://www.pedrojhernando.com/aelpa2007/informacion/EstatutAutonomiaIB_cas.pdf).

XXXVIII See the Estatuto of the Balears, Art. 18: "*1. Todas las personas tienen derecho a acceder en condiciones de igualdad a la cultura, a la protección y la defensa de la creatividad artística, científica y técnica, tanto individual como colectiva. Los poderes públicos procurarán la protección y defensa de la creatividad en la forma que determinen las leyes.*

2. Todas las personas tienen derecho a que los poderes públicos promuevan su integración cultural.

3. Los poderes públicos de las Illes Balears velarán por la protección y la defensa de la identidad y los valores e intereses del pueblo de las Illes Balears y el respeto a la diversidad cultural de la Comunidad Autónoma y a su patrimonio histórico".

XXXIX See Art. 5, Estatuto of Estatuto of Comunidad Valenciana.

XL On the system of competences, see: F. Balaguer Callejòn (ed), *Reformas estatutarias y distribuciòn de competencias, Instituto andaluz de administracòn pùblica*, Sevilla, 2007; J. Tornos Mas, "Balance de la distribución de competencias tras la reforma de los Estatutos de Autonomía", *Informe comunidades autónomas*, 2006, 879-89; "M. Paloma Biglino Campos, Reforma de la Constitución, reforma de los Estatutos de Autonomía y configuración constitucional del Orden de Competencias", in *Revista de las Cortes Generales*, n. 65, 2005, 7-30; E. Guichot Reina, "El reparto de competencias sobre protección de datos tras los nuevos Estatutos de Autonomía", in *Justicia administrativa: Revista de derecho administrativo*, n. 39, 2008, 5-18;

XLI M. Barceló i Serramalera , "Els drets lingüístics com a drets públics estatutaris", *Revista de llengua i dret*, , n. 47, 2007, 265-286

XLII On the financial system in the new *Estatutos,* see A. de la Fuente- M.Guidín "La financiación autonómica en los nuevos estatutos regionales", in *Hacienda pública española*, n.182,, 2007, 165-200; E. Emilia Girón Reguera, "La incidencia de la reforma de los Estatutos de Autonomía en la financiación autonómica", *Revista española de derecho constitucional*, n. 27, Nº 80, 2007, 75-111

5. The relationship between the new Estatutos and the Spanish Constitution

Soon after the approval of the first *Estatutos,* the literature split over the constitutionality of many new provisions included in those texts[XLIII].

Suffice it here to recall two exactly opposite positions appeared on the *Revista d'estudis autonòmics i federals*: those by Pedro Cruz Villalón[XLIV] and Eduard Roig Molés[XLV].

In that article by Cruz Villalón, after recalling what he considers the main aspects of the Spanish territorial model, the author identifies those features that have never been challenged since 1978. Then Cruz Villalón moves on to analyse what he calls the re-foundation period of the new *Estatutos de autonomía*; in his opinion, these new *Estatutos* imply a re-definition of the State by the CAs, especially looking at the draft of the *Estatuto de Catalunya*.

A very different position is expressed by Eduard Roig Molés. According to him, the new institutional equilibrium coming from the *Estatuto de Catalunya* should be considered as a fundamental step in the development of Spain's original territorial model, since it would ensure a clearer definition of the distribution of powers and a more transparent financing system. At the same time, it would imply the solution to new institutional needs (the example given by the author refers to the participation of the Autonomous Communities in the decision-making processes concerning state-wide issues).

The first opportunity for the *Tribunal Constitucional* (TC) to rule on the constitutionality of the *Estatutos* was given in the *sentencia* n. 247 of January 12, 2007, focused on Art. 20 of the *Estatuto* of the Comunidad Valenciana[XLVI].

XLIII On the relationship between the reforms of the Estatutos and that of the Spanish Constitution, see: T. Ramón Fernández Rodríguez, "De la reforma de los Estatutos a la reforma de la Constitución", *Foro: Revista de ciencias jurídicas y sociales*, n. 5, 2007, 13-28; M.A. Aparcio Perez, "La adecuación de la estructura del Estado a la Constitución (reforma constitucional vs. reforma de los estatutos)", in *Revista catalana de dret públic*, n. 31, 2005, 57-86; Ferret i Jacas, "Estatutos de autonomía: función constitucional y límites materiales", in *Revista catalana de dret públic, n.* 31, 2005, 87-108

XLIV P. Cruz Villalón, "La reforma del Estado de las autonomías", in *Revista d'Estudis autonòmics i federals*, n. 2, 2006, 77 ff.

XLV E. Roig Molés, "La reforma del Estado de las Autonomías: ¿ruptura o consolidación del modelo constitucional de 1978?", in *Revista d'estudis autonòmics i federals*, n. 3, 2006 , 149-186; see also: J. Pèrez Royo, "Consideracines sobre la reforma de la estructura del Estado", in *Reforma del Estatuto de autonomia para Andalucìa*, vol. II, Parlamento de Andalucìa, Sevilla, 2005, 37 ff.

The TC rescued the contested provision, by acknowledging the right to high quality water, as provided for in subnational *Estatutos*. The decision is important since it clarifies that an *Estatuto* is an act that cannot be disposed of by the sole will of the State or of the CA. It is an act emanating from the wills of both entities.

There are two main positions in the literature in this respect: according to some scholars, this act is the expression of a sort of constituent power ("*una cierta potestad constituyente*") having a constitutional meaning[XLVII].

According to other scholars, it is a mere "*norma de organización* " of the CA.

Moreover, the TC recognized a broad interpretive function to the *Estatuto* with regard to the constitutional provisions devoted to the competences of a CA.

The TC specified also that the content of the *Estatutos* shall not be limited to what Art. 147, c. 2, recognizes, but they are free to add other contents, except provisions in contrast with the CE: in this sense, Art. 147, c.2, provides for the minimal content of the *Estatutos*.

Having said this, the TC moves on to deal with the provisions devoted to rights in the *Estatutos*. In this respect, there are two main positions in the literature[XLVIII]: according to

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XLVI On this decision, see: M.Iacometti, "La 'prima volta' di un nuovo Statuto (quello valenciano) di fronte al Tribunale costituzionale", *Diritto Pubblico Comparato ed Europeo*, 2008,. 702 &f.; see also Francisco M. Caamaño Domínguez,

"Sí, pueden: (declaraciones de derechos y Estatutos de Autonomía)", *Revista española de derecho constitucional*, n. 79, 2007, 33-46

XLVII On this debate, see J. Tornos Mas, "La reforma estatutaria: un debate marcado por la posición constitucional de los Estatutos de Autonomía", in *Revista General de Derecho Administrativo*, n. 12, 2006; J.J. Solozábal Echavarría, "El Estado social como Estado autonómico" in *Teoría y realidad constitucional*, n.3, 1999, 61-78; G. Trujillo Fernández, *Lecciones De Derecho Constitucional Autonómico*, Tirant Lo Blanch, Valencia,. 2004, 122 ff.

XLVIII For a general overview: G. Càmara Villar, "Reflexiones sobre tres aspectos de la reforma del Estatuto de autonomía para Andalucìa: principios, derechos y deberes, y administraciòn de la justicia", in *Reforma del Estatuto de autonomia para Andalucìa*, cit, vol. II, 157 ff; see also P.L. Murillo De La Cueva, "Sobre la reforma del Estatuto de autonomía para Andalucìa. Los principios y los derechos", in *Reforma del Estatuto de autonomia para Andalucìa*, cit., vol. II, 85 ff.; A. H. Català i Bas, "La inclusión de una carta de derechos en los Estatutos de Autonomía", *Revista española de la función consultiva*, n. 4, 2005, 181-204; G. J. Ruiz-Rico Ruiz "Derechos sociales y reforma de los estatutos de autonomía: el derecho a la vivienda", *Nuevas Politicas Públicas: Anuario multidisciplinar para la modernización de las Administraciones Públicas*, n. 2, 2006, 74-95; R.Canosa Usera, "La declaración de derechos en los nuevos Estatutos de Autonomía", Teoría y realidad constitucional, n.20, 2007, 59-115; M. Aparicio Wilhelmi- G. Pisarello "El reconocimiento de derechos, deberes y principios en los estatutos de autonomía: ¿hacia una comprensión multinivel o en red de la protección de los derechos?", El Clip, n. 42, 2007, http://www.gencat.cat/drep/iea/pdfs/c42.pdf; M. Carrillo López, "Los derechos, un contenido constitucional de los Estatutos de Autonomía", Revista española de derecho constitucional, n. 80, 2007, 49-73; E Expósito, "La regulación de los derechos en los nuevos Estatutos de Autonomía", *Revista d'estudis autonòmics i federals*, 2007, 147-202.

Castellà Andreu[XLIX] and Ferreres Comella[L], for example, there is not a necessary and a *priori* contrast between the constitutional provisions and the new norms contained in the *Estatutos*; according to other scholars, there would be the risk to create asymmetries in terms of rights's protection, and a reserved jurisdiction for the Constitution in the field of rights should be acknowledged[LI].

Finally, the TC rescued the provisions of Art. 17, c. 1, of the *Estatuto* of the Comunidad Valenciana, understanding it as a precept addressed to the legislator and not breaching the State competence in the ambit of water planning. In order to rescue the provision, the TC distinguished between the fundamental rights and freedoms, and the *principios rectores*[LII] of social and economic policies, that would be sort of non-directly-applicable principles, aimed instead at orienting the activity of legislators and giving them goals to be achieved. They do not lack legal nature (in this sense the conclusion reached by the TC differs from that of the Italian *Corte Costituzionale*[LIII]); at the same time, thanks to this distinction, those provisions do not jeopardize the principle of equality contained in the CE.

Alongside this subnational provision embodying *principios rectores,* there might be some clauses devoted to rights that are already included in constitutional provisions: these would not be inconsistent with the CE, but they would be just reproducing a constitutional precept.

In case of norms which go beyond the constitutional precepts, it will be necessary to consider their link to the local needs: if they embody local aspirations, they might not be considered as unconstitutional[LIV].

XLIX J. Castella' Andreu, "Lo statuto di autonomia del 2006 come (discutibile) strumento per la realizzazione dell'autogoverno della Catalogna", in S.Gambino (ed.), *Regionalismi e statuti*, Giuffrè, Milano, 2008, 216 ff..

L V. Ferreres Comella, "Derechos, deberes y principios en el nuevo Estatuto de Autonomía de Cataluña" in V.Ferreres Comella-M. Paloma Biglino Campos- M. Carrillo López (eds.), *Derechos, deberes y principios en el nuevo Estatuto de Autonomía de Cataluña*, CEPC, Madrid, 2006, 38 ff.

LI L.M. Díez-Picazo, "¿Pueden los Estatutos de Autonomía declarar derechos, deberes y principios?", in *Revista Española de Derecho Constitucional*, n. 78, 2006, 63-75.

LII M. A. Aparicio Pérez- J. M. Castellà Andreu- E. Expósito (eds), *Derechos y principios rectores en los estatutos de autonomía*, Atelier, Barcelona, 2008.

LIII Corte Costituzionale, Judgments 372-378-379/2004, available at www.cortecostituzionale.it

LIV M.Iacometti, "La 'prima volta' cit 716.

The decision of the TC was characterized by a deep division among its components, and opened a new phase of incertitude, in the wait for the upcoming decision on one of the most commented upon *Estatutos*: that of Catalunya[LV]. .

[LV] Against the Estatuto de Catalunya many objections were addressed: on the 31st of July 2006, some members of the People's Party presented a *recurso de amparo* before the Constitutional Court; on the 19th of September 2007, 112 articles and four additional provisions of the Estatuto de Catalunya were contested before the Court by the *Defensor del Pueblo,* on the following grounds: the mention of Catalunya as a Nation, the provisions concerning the language, the competences, the jurisdictional system, the creation of the figure of the "Sindic de Greuges", which is a sort of Ombudsman at local level, the discipline of bilateral relationships. Other claims were presented by the Government of Murcia and that of the Balearic Islands. See R.Tur Ausina, "SPAGNA – Lo Statuto della Comunità di Catalogna e di Valencia impugnati dinanzi al Tribunale costituzionale", on http://www.unisi.it/dipec/palomar/027_2006.html#spagna1. Another element to be taken into account for understanding the political importance of this decision is given by the request of objection to the judge Prof. Pablo Perez Tremps, which was accepted by the plenum of the Court on the 5th of February 2007.

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