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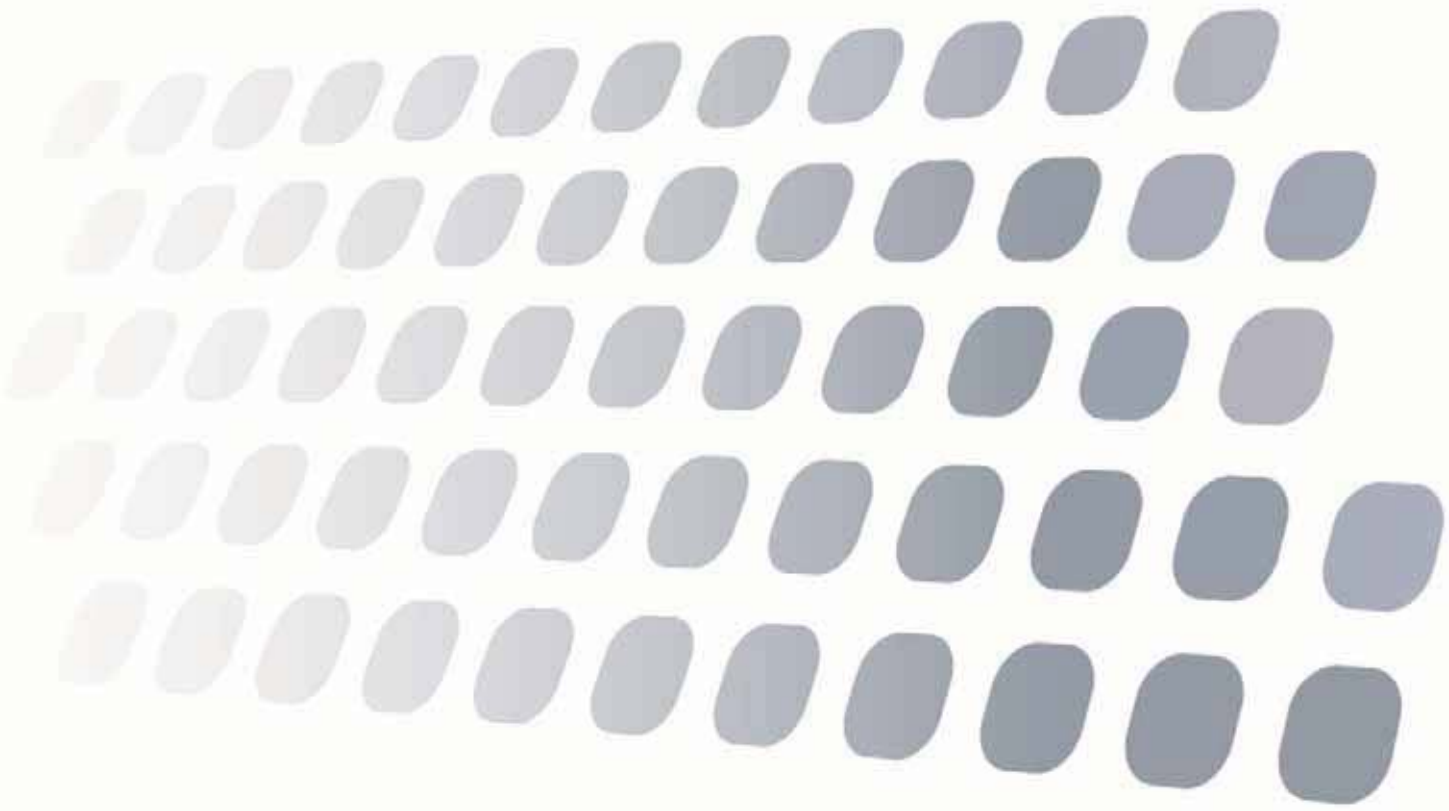

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Perspectives on Federalism: Why a new journal?

by

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Perspectives on Federalism, Vol. 1, single issue, 2009

In launching a new journal we feel the need to explain the reasons why the Centre for Studies on Federalism takes this initiative, characterised by a range of specific features. Several interesting scientific journals in English devoted to federalism are already issued all over the world. They are generally focused on one geographic area in particular, on certain levels of government or on specific academic disciplines. Therefore we believe there is room for a new interdisciplinary journal to consider federalism – federal institutional arrangements as well as potentially federalising processes - at all levels of government. The very name *Perspectives on Federalism* stresses that the journal will consider federalism from different disciplinary, geographic and theoretical perspectives.

Federalism is somehow a buzz-word, a contested concept, defined in different ways and conveying various meanings and connotations. In the British debate about European integration it refers to centralisation, while almost anywhere else in the world it refers to decentralisation. Some authors define federal institutions in strict and specific terms. Others employ broader definitions which can comprise a vast range of institutional arrangements. Some consider it only as an institutional theory. Others propose it as a fully-fledged political thought or a new paradigm. Some focus their analysis on federal states, others on integration and disintegration processes which could lead to federal arrangements. The deepening of the European integration process has generated an enormous amount of academic studies debating the federal features of the European Union, which is still short of being a fully-fledged federation. Indeed, the European Union is often considered as the laboratory of a new federalism.

The journal embraces a wide conception of federalism, just like the Bibliographical Bulletin on Federalism launched in 2005, which receives significant attention from the international academic community, with an average of 15000 visits a month. Mario Albertini (1963-1993) defined federalism as a new political thought or a new vision of the world, and Daniel Elazar (1991) as a new paradigm. They share insights with the institutional analysis of Kenneth Wheare (1963), and the study by Carl Joachim Friedrich (1968) of federalising processes. As a working definition we could say that federalism is a single word for the theory and practice of multi-level democratic government from the normative and descriptive standpoints. This obviously must include the historical, social,

political, economic and cultural processes through which they are created and/or developed.

Federalism is about acknowledging that the world is complex and plural, increasingly ill-fitted for monist conceptions of the State, sovereignty, nation, identity, etc. Just as the federation was initially conceptualised as a middle ground between a confederation and a unitary state, so supranational federalism can be located somewhere between international anarchy and a centralised world state – often chosen by many authors as a polemical target, even if nobody actually advocates it. The processes creating new levels of government, within existing states and between and above existing states, are all part and parcel of federal studies. The weakening of the legitimacy of the nation-state – although it continues to be the main identity reference for most people in the world - is a common condition of possibility of processes in both directions. This also sheds light on the vast debate and trends towards fiscal decentralisation and fiscal federalism (Oates 1998; Ahmad and Brosio 2006). Just as the increase of interdependence in scope and extension underlies both the regional integration process and the global governance debate and developments.

Federal arrangements and federalising processes are one of the available answers to the issue of interdependence and of regional and global governance. The analysis of the advantages and disadvantages, of the costs and benefits, of the pre-conditions for and of the actual development of potentially federalising process are thus of crucial importance to best assess the institutional choices ahead. Federalism is definitely more demanding than simple intergovernmental cooperation in terms of trust, delegation of competences and powers, deciding and acting together. But it is also more democratic and effective. However, sometimes the better can be the enemy of the good. The normative value of federalism and of the potential alternatives, such as the conditions of possibility for its establishment or those of the potential alternatives, must be subjected to scrutiny and analysis. Until a few years ago, most scholars discarded the idea that European integration could lead to a fully-fledged federation. Now, although the EU is not (yet?) a federation, there is a vast and growing amount of theoretical, empirical, and comparative literature about its federal features. This shows that all processes of institution-building are potentially federal in character, precisely because they are open-ended. A federal outcome is not at all certain, just as it cannot be excluded in advance. Therefore, decentralising

processes, regional integration processes, the global governance debate and development can all be considered as potentially federalising processes.

European integration and several decentralising processes around the world suggest that the processes of creating new institutions within and/or above the states – which may or may not be or become federal – can produce institutional settings with some federal features. Institutions do matter and do influence the behaviour of people and states (Keohane 2002). Institutional design is thus a crucial element in trying to solve several problems and ensuring public goods at all levels of government. As Hamilton pointed out: institutions must produce incentives for people's interests and duty to coincide. The reflection on the best normative institutional solutions – or more precisely the assessment of the relative costs and benefits of the potential alternatives and the analysis of their suitability to the specific situation and context to which they shall apply – and the analysis of the potential and actual transition processes, or institution building processes, will thus be at the core of the *Perspectives on Federalism* focus.

Just as European integration may turn out to be the transitional institution building process which leads to a European federation (although this is not at all certain), so the intense institution building processes occurring at regional and global level may turn out to be the start of an integrative path leading elsewhere and at world level. Global governance is not federal at the moment. But federalism is about supplying public goods to groups which share certain problems but not others and which want to deal with them separately. Global governance is about providing public goods at world level, in a situation in which the states want to continue to handle most problems separately. It may or may not acquire federal features, but the basic problems involved are the same. Therefore federal studies can offer some insights into the global governance debate both from a descriptive and a normative perspective, building on the literature which has analysed the strengths and weaknesses of the federal solutions.

Federalism is also about the recognition that there are no closed boxes in world politics. All levels of government and of political struggle interact with one another. The sharp distinction between domestic and international politics and the analysis of one aspect in complete isolation from the others cannot bring a fully satisfactory comprehension of either sphere. If politics and society were as simple as many hard-nosed realists assume, the researcher's job would be easier. Unfortunately, the world is complex, plural and nuanced.

This requires an open-minded attitude to other disciplines and perspectives to try to cope with this complexity and grasp the fundamental linkages of the interdependence figurations (Elias 1939-2000) which characterise and influence individual and group behaviours at different levels of analysis.

Perspectives on Federalism thus aims to become an open forum for debate to discuss this whole complex bundle of issues. Also with this in mind, the Centre has chosen to publish it only in its electronic version. Printed versions are expensive and force the publisher not to provide the contents freely on the web. The statutory goal of the Centre for Studies on Federalism is to promote studies on federalism. Just as the Bibliographical Bulletin is a free service to the international academic community, so *Perspectives on Federalism* will be a free and open forum for debate, although it will comply with the international academic standard with regard to the double blind review in the selection of the essays to publish.

Advocates and critics of federalism are equally welcome to contribute. The contribution of scholars from different disciplines is necessary if the journal is to fulfil its aim. Both normative and descriptive papers are welcome, as we are conscious that there is no sensible normative theory which does not carefully consider empirical reality, just as there is no descriptive analysis which is not theoretically informed and which can completely expel the normative preferences of the author. The journal is not planned as a tribune for scholars of the Centre of Studies on Federalism, but as a meeting point for scholars of federalism around the world. With this in mind we have set up an extensive editorial board made up of young scholars who will monitor the main developments in federal states and international organisations relevant to scholars of federalism. The journal will also publish short notes about such developments to provide raw material and information for scholars around the world to build up their researches.

We hope this new initiative will be as successful as the Bibliographical Bulletin, although we are aware that it requires much more active participation by the international academic community. That many scholars of federalism have shared and supported this project by joining the journal's scientific committee, forming a selected pool of reviewers for the incoming contributions, is a promising start. We hope you will find the journal interesting and will actively contribute to its development.

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The Role and Power of the European and the National Parliaments in the Dynamics of Integration*

by Paola Bilancia

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Abstract

This essay aims at giving an overview on the role of the European and national Parliaments in the dynamics of integration.
After resuming the main issues that such a subject present, the author analyses the recent developments in this field paying attention to the Protocols on subsdiarity and Protocol on the role of national parliaments in the European Union.

Key-words:

European Parliament, National Parliaments, European Integration, subsidiarity

1. Preliminary remarks

The European integration process has certainly enhanced the role of National Governments more than that of National Parliaments (NPs).

The pre-eminent legislative role of the Council of Ministers has been promoting almost exclusively the role of national Ministers at the EU level. Only since 1979 has the European Parliament become elective, and only since the enforcement of the Maastricht Treaty has it played the role of co-legislator in some matters.

On the other side, the enhancement of the role of the European Parliament, as well as a greater involvement of NPs, are generally seen as significant ways of decreasing the deficit of democracy within the Union. Indeed, the closer citizens are to their NPs, the more they will participate in the European integration process. The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in the context of European integration. In 2001, the Council of Laeken[I] declared that the Union needed to become more democratic, more transparent and more efficient, and National Parliaments could contribute towards the legitimacy of the European project.

In this context, it is, first of all, worth comparing the role played by National Parliaments in the overall European constitutional system with that played by the European Parliament (Van den Berg 2008).

We may easily point out that there is no symmetry between the NPs and the European Parliament. Therefore, we must begin our comparison by considering that the EU system is not actually based on bicameralism, at least not of the same kind of the bicameralism characterizing the classic parliamentary systems in effect in several Member States.

The European Parliament cannot be thought of as one of the Chambers of a hypothetical bicameral system at the EU "constitutional" level, since the Council itself is neither a "second" Chamber, nor a "High" Chamber, although the revisions of the Treaties have increased the power of the European Parliament with regard to that of other European Institutions (the Council, in particular).

Today, the European Parliament plays a firmly established role as co-legislator, with regard to most of the areas under the competence of the Union. It has budgetary powers, and exercises a democratic control over other European Institutions. It also shares (more or less equally) the "legislative" power with the Council of the European Union, it is empowered to adopt European laws, and may accept, amend or reject the content of European legislation.

The co-decision procedure (Art. 251 EC) — introduced by the Maastricht Treaty in 1992, and extended and made more effective by the Amsterdam Treaty in 1999 — endows both the European Parliament and the Council of the European Union with nearly the same political and legal weight in a wide range of matters (we can estimate that, today, two-thirds of European directives and regulations are adopted by following this procedure). But the overall system still appears to be persistently steered by the Council, which represents the National Governments.

Although, as mentioned above, the European Parliament has increased its powers, its role cannot be compared with the traditional influence exercised by Parliaments within the several constitutional systems of the Member States. Though strengthened, the European Parliament does not possess all the attributes generally associated with Parliament as a legislature. We might notice, at this point, that the democratic deficit of the EU is related to "a mismatch between national conceptions of democratic power and authority on the one hand, and the new institutions and practices of transnational governance" (Boerzel - Sprungk 2007:113-137).

The consequence of this mismatch is that, on the one hand, each competency transferred from the Member States to the European Union is often perceived as a compression or reduction of democratic principles. A certain matter which, in the past, had been debated by the two Houses at national level, is now regulated by laws approved with the noteworthy influence of the Council, which represents only the Executive Power of the Member States.

So far, in spite of increasing democracy and popular participation at EU level, thanks to the stronger role played by the European Parliament today, a sort of "democratic gap" is still being perceived. Moreover, due to the higher concentration of competencies at the EU level, National Parliaments suffer from a reduction of their "democratic influence".

The results seem to be quite paradoxical: because the EU level is not "fully" respondent – or, at least, is perceived as not being so – to democratic principles, while National Parliaments are not directly involved in the European legislative process, the overall democratic guarantees of the system, taken "as a whole" from a "multilevel point-of-view", seems to be diminishing.

In other words, the devolution of powers, functions and competencies from the Member States to the European Union may be considered as a non-"zero-sum" game in terms of democratic accountability.

Thus, the Treaty of Lisbon is an attempt to tackle these problems through norms aiming to increase the participation of National Parliaments in relevant decision-making processes.

2. The role and function of multilateral networks or mechanisms involving National Parliaments at EU level

The Treaty of Lisbon emphasizes the role of National Parliaments within the European system in many ways.

In accordance with Art. 12 of the Consolidated Treaty on the European Union, National Parliaments shall "actively" contribute to the good functioning of the European Union.

When/if the Treaty of Lisbon will come into force, National Parliaments will be informed by EU Institutions and forwarded the drafts of EU legislative acts[II]. This will facilitate their monitoring role; yet, the way in which this will be organized, as well as its degree of effectiveness, will depend on the constitutional relations between Government and Parliament.

The direct transmission of projects and documents from the Commission to NPs has recently become effective, but often produces a contrary output, since the NPs are in no condition to process those papers.

NPs will also be involved in the fields of Freedom, Security and Justice. Indeed, according to the new provisions in the Treaty of Lisbon (ex Art. 70, Treaty on the Functioning of the EU), National Parliaments will take part in the evaluation mechanisms for the implementation of EU policies in those areas. They will be involved in the political

monitoring of Europol and the evaluation of Eurojust activities (Art. 88 and 85 of that Treaty).

On the other hand, the European Parliament will become a co-decision maker for the legislation concerning Justice and Home Affairs.

National Parliaments will also participate in the revision process of the Treaties (Art. 48 Tr.) and be notified of EU-accession applications (Art. 49 Tr.).

3. The role of National Parliaments in monitoring the principle of subsidiarity

According to the Protocol on the application of the principles of subsidiarity and proportionality, National Parliaments are to verify that the principle of subsidiarity (Estella 2003 Bilancia 2004; Jeffery 2006) be complied with. The "early warning" system will be a significant innovation in the normative decision-making process: each House will receive all drafts concerning EU legislative acts and will be granted eight weeks to decide whether the proposal is consistent with the principle of subsidiarity. The European Parliament will take into account the observations submitted by National Parliaments as "reasoned opinions" approved by following this procedure. So, if one-third of National Parliaments (one-fourth in the Freedom, Security and Justice area) agree on amending a bill, the European Commission must re-examine it (Art. 7; paragraph 3 of the Protocol). If a simple majority of National Parliaments agrees on the fact that the proposal for a legislative act does not comply with the principle of subsidiarity, it must be re-examined and modified. After such revision, the Commission may decide to maintain, amend or withdraw the proposal.

When choosing to maintain a proposal, the Commission will have to justify, through a consistent opinion, why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as those of National Parliaments, shall be submitted to the European Parliament and Council. These two institutions shall consider whether the legislative proposal is consistent with the principle of subsidiarity, paying attention to the reasons expressed and shared by the majority of National Parliaments, as well as to the reasoned opinion of the Commission. If, by a majority of 55% of the Council

members or a majority of the votes cast in the European Parliament, the Council or the Parliament states that the legislative proposal is not consistent with the principle of subsidiarity, the proposal shall be dropped.

This kind of *ex ante* control will eventually create a sort of multilateral mechanism, at EU level, exerted by national Parliaments: the European Parliament at this point is due to play the role of counterpart in the evaluation process of subsidiarity.

While these procedures operate in the so-called "*ex ante*" phase of the legislative process, National Parliaments will possess also a sort of "*ex post*" power, a peculiar and interesting innovation in the institutional structure of the European Union, as devised by the Treaty of Lisbon.

Indeed, according to Art. 8 of the Protocol[III], after the legislative act has come into force, the Court of Justice of the European Union shall judge actions concerning its possible infringement of the principle of subsidiarity, as notified by a Member State in accordance with its constitutional and legal order, on behalf of its National Parliament or a single Chamber thereof.

All the above-mentioned efforts to increase the "democracy" of the European Union must be considered positively, even if they betray some problematic aspects.

Firstly and generally, one should never forget that, whenever elements of further complexity are added to a very complex system, the completion of procedures is bound to take much longer, and the final outcome will be acquired with greater difficulty. Therefore, it is not surprising that, today, the legislative process both at EU and national level is ever slower, and that this slowness is considered critical in a modern, dynamic Europe which, on the contrary, needs to be able to intervene quickly.

From a different point of view, after observing the kaleidoscopic and truly complex framework of the new provisions concerning the role of National Parliaments in the European Union, devised after the crisis of the European constitutional process in 2006, we may highlight that, in a multilevel perspective, the Member States have the precise duty to adapt their internal procedures to the new "face" of the European legal order (of course, when/if the Treaty of Lisbon will come into force). Thus, national legislators, in tune with their complementary role within the European architecture, must deal with several interesting problems.

This is a notable point, as it shows quite well how, today, both legal systems (European and

national) are closely and deeply interwoven.

There seem to be at least three different paths which a Member State may consider to take in order to adapt its overall legal order to the new EU institutional structure: enhancing its National Scrutiny System, reforming the Rules of Procedure of its Parliament, invoking the new discipline to appeal to the European Court of Justice on behalf of the National Parliaments.

4. The role of National Parliaments in scrutinizing governments

The involvement of National Parliaments in European affairs has become increasingly dependent on the effective relationship between the National Legislative Power and the National Executive Power, according to the national constitutional norms and praxis (Goetz - Meyer -Sahling 2008). Their actual involvement in the European decision-making process depends indeed on the scrutiny of their own governments: this is important not only in the fields of Justice and Home Affairs and Common Foreign and Security Policy, but also in the areas of implementation of the open method of coordination and internal decision-making the EU is bound to take over (Basel II, WTO), as well as all the fields without the province of the EU Parliament.

Member States are required to regulate their internal relationship between Parliament and Government according to the general perspective of the political influence the first exercises upon the latter. The European Union could attempt to achieve a more effective task by developing best-practice exchanges in parliamentary participation to the EU integration process, but the task of promoting a better scrutiny on the Government by the NPs pertains to the exclusive domain of national constitutional laws.

This is not a new issue. One of the major problems is that National Parliaments have hardly any influence on the policies discussed and approved by their Government representatives in the Council.

When there is a strong political connection between a Parliament majority and a Government — a thing that is deemed essential in a parliamentary form of government —, that relationship must also be functionally and fully extended to the political stance that a Minister will take when a European legislative proposal is discussed in the Council (Auel 2007: 157-179; Holzhacke 2007: 180-206).

The implementation of a fair cooperation between Parliament and the Executive Power in all European affairs requires a structured system, and cannot simply rely on such ordinary procedures as the audit of Government members before the Assembly.

In Italy, we know that — apart from "formal" instruments and procedures — Parliament is not "substantially" interested in what is being done in Brussels or Strasbourg. The Italian official position in the European Council is often formed within the national Council of Ministers, after internal discussion by functionaries and legal experts. The annual Community Law, passed in 2000, has strengthened the position of Parliament in relation to the Government (Law n. 422 of 2000), allowing for a flexible *ex ante* scrutiny of EU proposals, in which Parliament can present its amendments before the bill is tabled at the EU level: without it, the Government would be free to decide its own stance. According to a Law of 2005[IV], the Government has to send the two Houses all the EU documents (included White and Green Papers) indicating the dates appointed for their discussion in the proper Parliamentary Committees. Furthermore, the Government shall expose its stance in Parliament before each European Council, and report to the specific Parliamentary Committee before every Council of Ministers in Brussels.

During the thirteenth legislature, 132 Parliament meetings took place, attempting to influence the Italian stance in relation to legislative acts, parliamentary commissions, and Ministers. Many EU proposals were scrutinized in the fourteenth and in the fifteenth Legislatures too[V].

Of course, the necessity of strengthening and emphasizing the relationship between Parliament and the Council at national level is even higher after the new Treaty.

Indeed, as National Parliaments will be more directly involved in the European system, some mechanisms must be devised to avoid political conflicts between the two branches of the State. For example, what if a Member-State Minister approved, in the Council, a EU draft which «its own» National Parliament, or at least one of its two Houses, had found or would later find unlawful according to the subsidiarity principle? From this point of view, it seems quite strange that a State should not express its will, regarding EU affairs, with one voice.

5. The Reform of the Rules of Procedure.

A Member State has to modify the Rules of Procedure of its Parliament, in order to accomplish the new "early warning" system.

As mentioned above, Parliament has no more than eight weeks to check whether a EU draft is compliant with the subsidiarity principle. Although eight weeks might seem like a long time, with regard to the necessity of a quick intervention, it is not so, indeed, if we consider that National Parliaments are supposed to "also" go through their ordinary day-to-day agenda.

The Italian Houses are structured into Assemblies and numerous Committees (even Committees on European Affairs). Therefore, one must consider the option of devolving to these Panels, instead of the Assemblies, the examination and drafting of the reasoned opinions required by the Treaty of Lisbon. In bicameral Parliaments, procedures must be established to avoid discrepancies between the two Houses: for example, one may think of a "Bicameral Commission for European Affairs" composed of senators and deputies (Gianniti 2007 and 2008).

Our last point deals with the procedure concerning the appeal to the European Court of Justice on behalf of National Parliaments. In fact, it seems necessary that a State should adopt new dispositions in order to regulate the Houses' power to require the intervention of the European Court of Justice.

Beside the above-mentioned reforms, what seems to be also appropriate (perhaps, almost necessary) is that National Parliaments should become fully and profoundly aware of their new role within the European system. It is important that they become conscious of the fact that, in the light of the new provisions, they will be considered not only national but also "European" bodies, occupying a position formally independent of the will of the State as expressed by the Government.

Under a "multilevel constitutional" perspective, we may say that National Parliaments could be nowadays "parts" of the overall European "constitutional" structure, like the so-called Independent Authorities and the National Administration, which are also "European" Administrations whenever they enforce EU law, and, like the National Judiciary, often wear, as has been said, a "European Law Wig".

Indeed, it is now up to National Parliaments to bear the weight of the "external" democratic legitimacy of the European Union. Therefore, we may say that the European Union is now trying to achieve two sources of "democratic" legitimacy: an "internal" one, based on the European Parliament, and an "external" one, based on National Parliaments as "components" of the overall structure of European political and legal integration.

But we may not be satisfied with the new "role" and "position" gained by these "Europeanized" "national" Parliaments.

Certainly, we should also stress that the "external" democratic path traced by the Treaty of Lisbon does not confer a truly "active" position to National Parliaments.
It seems to be quite paradoxical. No matter whether National Parliaments may acquire new powers, this should not reduce the "role" and "charisma" of the European Parliament. Still, the (new) system of double democratic legitimacy (introduced by the Treaty of Lisbon) only partly reduces the "democratic deficit" at EU level. The involvement of the national Parliaments in the European legislative process helps diminishing the democratic deficit, even if we have to consider that the strengthening of the EP and the abolition of the veto power will really attain such a goal. After the Lisbon Treaty, National Parliaments have only the power to "stop" or "block" the legislative process at EU level, or to defend the subsidiarity principle under the safeguard of the competencies, prerogatives or interests of the Member States.

Their function is that of "warning" rather than of "proposing" drafts. They may amend or correct or at least try to nullify the EU legislation (of course not directly, but indirectly, by exercising their power to require a judgment by the Court of Justice), but cannot directly participate in the elaboration of European directives and regulations. We may say that, rather than the power to help to build the "engine" of European political integration, they have the power to have it "tuned up".

One may say that, on the contrary, National Parliaments have played an "active" role right from the start, in the so-called "descending" phase of the European integration process, by implementing directives into their own national legal system.

However, even in that "descending" phase, National Parliaments cannot be considered the "engines" of integration. Quite often, indeed, directives are so detailed that little room is left for the National Legislator to adapt them. According to national procedures, quite often (at least, in Italy) the implementation of EU directives is delegated

by Parliament, through the annual Community Law, to the Executive Power, allowing the Council of Ministers to adopt "legislative decrees" aimed to implement directives.

One may say that, if there is already a European Parliament representing the European people, it is not necessary to recognize another power of proposal pertaining to National Parliaments, as well. This is obviously right and acceptable.

Yet, the new Treaty recognizes that no less than one million citizens, nationals of a significant number of Member States, have the power to take an initiative and invite the European Commission, within the framework of its powers, to submit any appropriate proposal when they believe that a legal act of the Union is required for implementing the Treaties (Art. 11, paragraph 4).

We should also consider that the new Treaty confirms an analogous power of the European Parliament (strengthening it, by providing that, should the Commission not follow a Parliament's request, the Commission itself must motivate its denial).

Therefore, why can't we argue that the increasing involvement of National Parliaments may reinforce the democratic issue? Why can't we say that National Parliaments may be involved also in an evaluation of the proportionality principle (not only the subsidiarity principle), on the one hand, and in a much tighter cooperation with the European Commission, e.g. for the elaboration of a new EU legislation, on the other? Why can't we say that the National Independent Authorities and the National Administrations actually seem to be much more "Europeanized" than National Parliaments, both in theory and in practice (Auel-Benz 2005: 372-393)?

A way of increasing the involvement of National Parliaments in European policy-making may be found in the provisions of Art. 9 and 10 of the Protocol of National Parliaments in the European Union, but these articles are not exactly written in order to confer genuine power of proposal to National Parliaments.

In sum, something has been done so far to increase the overall democratic legitimacy of the European Union, also in reply to the "mood" of European citizens, who are often not exactly "Euro-enthusiastic". Further steps seem to be necessary, above all with regard to an effective inter Parliamentary cooperation.

If the EU structure seems to be an ever more perfectible "constitutional multilevel network", linking tightly together the various Institutions at various levels, a greater European political integration should not bypass an effective Europeanization of National

Parliaments, as representatives of the "European *peoples*" (*with* "final –s"), together with their European Parliament representing the "European *people*" (*without* "final –s"), or, to be more precise, the European citizens.

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* Report of the meeting "The Integration Dynamics" in Fifty years European Parliament Experience and Perspectives - Hellenic Parliament Foundation, Athens, 17-18 October, 2008.

I See Presidency Conclusions (and Annexes) - European Council Meeting in Laeken - 14-15 December 2001, SN 300/1/01 Rev 1

II See the Protocol concerning the role of National Parliaments in the European Union.

III See also Art. 263 of the Consolidated Version of the Treaty on the Functioning of the European Union.

IV Law n.11 of 2005,"Norme generali sulla partecipazione dell'Italia al processo normativo dell'Unione europea e sulle procedure di esecuzione degli obblighi comunitari"

V During the 14th Legislature (2001-2006) there were 82 meetings at the Senate: during the 15th Legislature (April 2006- April 2008) 115 meetings of the Parliamentary Committees referring to European documents (legislative drafts) at the Senate.

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The impact of the cohesion policies on the "Form of Union"

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Abstract

From a "formalistic" point of view the Regions are and have been neglected (especially in the past) in the EU law context.

To express such a situation the German constitutional lawyers used the formula "*Landesblindheit*" (legal blindness towards the territorial subnational entities). This is confirmed in the Treaties (specifically in Article 10, ECT), where it can be seen that the subjects of the Community legal order are the states, as holders of the duty to collaborate with each other, which is instrumental for guaranteeing the effectiveness of the supranational law. It could well be argued that this "regional carelessness" constitutes just one "element" of the democratic deficit of the EU.

Starting from a "broad" concept of the democratic gap (i.e. focused not only on the question of the EU Parliament's powers) we can in fact conceive the absence of a strong legal status for the Regions as one of the most important "constitutional wounds" of the EU.

Against this legal background, the cohesion policies gave Regions a very important role in the economic dynamics of the EC/EU, forcing the political actors to "deal" with the regional blindness.

On the other hand, some political scientists have identified cases of *negative effects* of the cohesion policies on the form of the Union like, for example, the presumed improvement of the role of non-elected/bureaucratic actors at local level.

Key-words:

Landesblindheit, multilevel governance, cohesion policies, Form of Union, democratic deficit

1. Goals of the paper: a constitutional language for the cohesion policies

The goal of this paper is to expand some of the traditional concepts of constitutionalism in a twofold direction: first of all, it will be necessary to verify the utility of classic concepts of constitutionalism in order to analyze contemporary institutions. Then, secondly, it will be necessary to 'apply' the constitutionalist perspective to the area of the cohesion policies. As Leonardi (2005: 2-3) has pointed out, in fact, the literature on cohesion has been enriched above all by economists and by scholars in public policies and international relations. The mentioned author has never even quoted legal scholars. What will be attempted here, after having traced back the Community process to the paradigm of the 'federalizing processes', is to evaluate the impact of social policies (and cohesion policies are to be included here as well) on the form of the Union. This formulation (calling up concepts such as form of State, so dear to constitutionalists) is intended to designate relations between various levels of government (national, regional and supranational); all this stemming from a vision of cohesion as a '*dimension of relations among peoples and citizens of Europe*' (Campiglio-.Timpano 2001: 397).

This endeavor is made difficult, in the case of constitutionalists, by the fact that, historically, in Europe (and even more so in Italy), with a few celebrated exceptions, constitutionalists have not followed with due consideration the evolution of the Community legal order from its very first steps. I will try to fill this gap through the comparative method by looking at other constitutional experiences (Baldi 2003; Pierini 2003; Banting1982.)

2. The notion of "Form of State"

By "*Form of State*" Costantino Mortati (1973: 1 ff.) meant both the relationship between the classical elements of the State (sovereignty, territory and people) and the

fundamental aims of the State. In this sense, the notion of Form of State is connected to the concept of fundamental high policy goals (i.e. "political lines"). Under the formula "Form of State" Mortati grouped classifications related both to the vertical separation of powers (e.g. unitary versus de-centralized State, with regard to the relationship between the territorial entities; Liberal State versus Welfare State, with regard to the relationship between market and State), as well as to the horizontal separation of powers (e.g. democratic versus authoritarian State).

As Mortati himself pointed out, the notion of form of State represents the teleological moment of the form of government (that is, the whole of relationships between sovereign power[I])

By further developing this polysemy, Palermo (2005: 41 ff.) concludes that the Form of State concerns both the distribution of powers and the axiological dimension of a legal order.

His research attempts to translate one of the most important categories of the Italian Constitutional scholarship in the supranational context.

The first step of his study was to verify the strength of such a notion in legal orders different from that of Italy, finding similarities between this notion and other formulas like *Staatform* (Pernthaler 1986: 188 ff.) in Austria, *forma del pode*r (Rubio Llorente 1997) , *sistema* or *régimen politico*, *forma de Estado* in Spain, *rule of law* in UK.

In European Studies the only precedent for this research is represented by Caporaso's attempt to distinguish three forms of State: national State, regulatory State (starting from Majone's intuitions. Majone 1994: 78-102), and postmodern State.[II]

The notion of Form of State was also used by political scientists such as Daniel Elazar when he wrote about the presumed dichotomy between Unitary or Federal form of State (Elazar 1990).

In his pioneering study, Palermo links the notion of integration to the form of State and points out the constitutional relevance of such a connection by insisting on two elements:

> 'Although the integration is not an autonomous constitutional subject, it is a constitutionally relevant moment as the glue between the forms of State (integrated and so not exhaustive)'. (Palermo 2005: 229)

In this way, Palermo distinguishes two possible forms of State in the European context: the national and the supranational, which are each assumed to have their own constitutional dimension (Palermo focuses on the axiological meaning of the notion of Form of State).
This shows the interlaced nature of the system between the levels and their mutual implications.

By overcoming the dualism between monism and dualism, Palermo uses the notion of integrated form of State (that is, the whole of fundamental principles of a legal order).

The constitutional law of integration would be similar to the common law, founding itself on a legal order which pre-exists the State, on a wide production at regulative level, and on the adjudicative activity of a jurisdictional system which is above all remedial (Palermo 2005: 232).

Palermo's intuitions represent a starting point, because they insist on the "complex" nature of the European Union.

As a matter of fact, the EU, like all other complex systems, is characterized by such features: non-reducibility, unpredictability, non-determinism, non-reversibility. It is suggested here that the notion of complexity can offer a very important contribution (in terms of dynamism) to the multilevel constitutionalism theory. The bridge of this interlaced (from the original meaning of the term *complex*) system is provided by the constant exchanges among levels. By the formula *constitutional synallagma* it is to be understood the whole of flows, practices and rules which circulate from one level to another in a twofold direction (from top to bottom and vice-versa), enriching in a mutual way the European Constitution, which is a chameleonic and never-ending process of constitutional coordination. The bridge linking the levels is represented by Art. 234 ECT: thanks to this provision, the ECJ cooperates with the judges in producing its interpretative sentences. The latter are typical examples of cultural sources of law, which give new blood to the constitutional synallagma (Martinico 2007: 205-230).

This complexity reveals the interlaced nature of the Form of Union and implies -at the same time- the irreducibility of the EU to one of the legal tradition of its components, as I tried to point out above.

It is preferable to use the formula *Form of Union* instead of *Form of State of the Union* in this paper. When writing about the Form of Union, Mezzetti (Mezzetti 2006: 57-145) chose a similar option and decided to focus on the principles of the EU legal order, privileging in that way the axiological side of the notion.

A focus on the other side of this notion is also to be valued, that is to say, the relationship between the centre and the periphery in the multilevel context, in order to describe the impact of the cohesion policies on the multilevel constitutionalism and governance focusing on the subnational level: precisely, the regional one.

3. The possibility of a supranational Welfare

Is a supranational welfare possible in a context without an axiological homogeneity? This question was analyzed in multicultural contexts such as that of Canada by Banting and Kymlicka.

In their study they demonstrate the non exclusive relationship between solidarity and cultural homogeneity.

Those who support the opposite vision identify three kinds of trade-off effects between multiculturalism policies (MCPs) and Welfare policies (WPs):

1) the *misdiagnosis effect*, by which 'MCPs lead people to misdiagnose the problems that minorities face. It encourages people to think that the problems facing minority groups are rooted primarily in cultural "misrecognition", and hence to think that the solution lies in greater state recognition of ethnic identities and cultural practices. In reality, however, these "culturalist" solutions will be of little or no benefit, since the real problems lie elsewhere' (Banting- Kymlicka 2004).

2) The *corroding effect,* by which: 'MCPs weaken redistribution by eroding trust and solidarity amongst citizens, and hence eroding popular support for redistribution. MCPs are said to erode solidarity because they emphasize differences between citizens, rather than commonalities' (Banting- Kymlicka 2004).

3) The *crowding out effect*, by which: 'MCPs weaken pro-redistribution coalitions by diverting time, energy and money from redistribution to recognition. People who would otherwise be actively involved in fighting to enhance economic redistribution, or at least to protect the WS from right-wing retrenchment, are instead spending their time on issues of multiculturalism' (Banting- Kymlicka 2004).

Cultural heterogeneity would, in fact, weaken *trust and national solidarity across ethnic/racial lines* (Banting 2005) then 'multiculturalism policies that recognize or accommodate ethnic groups tend to exacerbate any underlying tension between diversity and social solidarity, further weakening support for redistribution' (Banting 2005).

As Banting concludes 'there is a tension between the ethnic diversity of one's neighborhood and levels of trust in neighbors, even when one controls for all the other factors that might influence trust, such as economic well-being, education, gender, age and so on', but: 'Many analysts simply stop at this point, and assume that diminished trust necessarily weakens support for redistribution… There is no statistically significant negative relationship between multiculturalism policies and growth in social spending across OECD countries' (Banting 2005).

It is suggested here that these conclusions can be used in order to support the possibility of a supranational dimension. Despite the differences between Canada and the EU expressed, among the others, by Weiler, one can argue that the former can be a good comparison term for the latter.

Some constitutional readings of the Social policies of the EU provided so far have emphasized the role of the principle of equality, seen as a key to read the Welfare dimension of the EU (de Burca 2005).

Other scholars, instead, have focused on solidarity without giving a precise content to this concept. The second reading of the EU social dimension seems more valid, but it is still necessary to add something. First of all: what does solidarity mean in a supranational context? Thus, why are the cohesion policies not included in the content of EU Social policies ?

One could thus surmise that cohesion policies should be read in light of the constitutional principle of solidarity, which belongs to the European constitutional

heritage. The considerations made by Pizzorusso (2002: 69) with regard to the impossibility of tracing the principle of substantial equality back to the European constitutional heritage could perhaps lead to a similar conclusion, even in the case of the solidarity principle. According to a reconstruction carried out by Somma (2003: 179-213), it is nevertheless impossible to ignore the several references to a solidarity dimension (read not only as a framework for duties justifiable in the light of superior interests) present in the European constitutions (Articles 16, 22 and 24 of the Greek Constitution; Article 81 of the Portuguese Constitution, Article 9 of the Spanish Constitution). Somma also adds all those constitutional provisions related to the substantial side of the equality principle, disconnecting the notion of solidarity from the constitutional duties dimension (see, for example, Art. 2 of the Italian Constitution). One can also stress further elements present in the Constitutions of the new EU member states: Art. 16, 17 Const. of Hungary; Art. 28 Const. of Estonia; Art.35 and following of the Const. of Slovakia; Artt. 64 and following of the. Const. of Poland).

Starting from these assumptions and looking at national constitutions, European Treaties and other "forms" of EU Law (ECJ case law, normative acts, including soft law and the EU Charter of fundamental rights), it is possible to provide some content to the supranational dimension of solidarity:

a) Solidarity as a framework of rights of subjects characterized by situations of asymmetry (the reference to consumers as 'weak subjects' ceases therefore to surprise). This is solidarity according to the Nice Charter.
b) Solidarity as a framework of duties (a key example being the second part of Article 2 of the Italian Constitution regarding binding duties), invoking a common belonging (Art. 10 ECT). The positive side of this 'community building' is given by Article 308 of the ECT.
c) Solidarity as a principle aiming to characterize the Union (Preambles of the Union Treaties, Art. I-2 and I-3 of the Constitutional Treaty for Europe (and 2 and 3 of the EUT after the possible entry into force of the Reform Treaty).

If the first version of solidarity is admittedly vague, the second one is particularly relevant due to the fact that it testifies to the particular nature of the Community. The positive side of this 'community building' with aims other than national aims is given in

Article 308 of the ECT. This is a genuine *"catch-all clause"* that provides for the possibility of the Council, acting unanimously upon a proposal from the Commission and after consulting the European Parliament, to take the necessary measures for the realization of any one of the aims of the Community, should the Treaty not have provided the necessary powers for the Community.

4. The cohesion policies as a part of the supranational welfare dimension

Cohesion is one of the tasks of the Community, as is obvious from Article 2 ECT (where, among others, a distinction is made between 'economic and social cohesion and solidarity') and Article 3, k)[III] of the ECT. It is also mentioned in Article 16 ECT regarding services of general economic interest, which talks of "*promoting social and territorial cohesion*", leaving out the term 'economic' and replacing it with "*territorial*".

Nevertheless, distinguished scholars on this issue favor a reading for which a systematic corroboration of Article 16 ECT and Article 3 would be necessary. In this sense, it is interesting to stress the choice expressed in the Constitutional Treaty (and in the Reform Treaty) where the word constantly accompanies the notion of economic and social development: e.g., Art. I-14 (Art.4 of the Treaty on the functioning of the EU, TFEU, if the Reform Treaty will entry into force) which provides that the policies regarding economic, social and territorial cohesion fall within the shared competences areas. Another example is provided by Art. III-416 (Art. 326 TFEU according to the Reform Treaty), which identifies a limit to the actions of reinforced cooperations in economic, social and territorial cohesion (together with common market).

Nevertheless, however undeniable is the still market-friendly spirit of the Treaty, one ought to point out the presence of some collaborative clauses between the reasons of the market and those of welfare.

One also needs to mention here the provisions of Article 136, c.3, ECT, where a functional common market is seen as a prerequisite for the harmonization of welfare systems. Free market and welfare objectives are therefore joined together, without viewing the former as an "obstacle" for the realization of general welfare objectives.

To overcome the presumed weaknesses of the European social dimension, it is necessary to complete the framework by including in this EU Social model the cohesion policies as well.

In the EC Treaty, an entire Title (the XVII) is devoted to social and economic cohesion and in Article 158 one can find a definition of economic and social cohesion, being understood as instrumental for the aim of pursuing the '*overall harmonious development*' of the Community. The Treaty specifies that 'the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favored regions or islands, including rural areas'. Article 159 recalls how Member States must coordinate their economic policies, enumerating the instruments of the cohesion policy (the European Agricultural Guidance and Guarantee Fund, the European Social Fund; the European Regional Development Fund, to which the European Investment Bank and other existing financial instruments are added). Among the structural funds, a special role should be recognized to the Social Fund, regulated in Title XI ("Social policy, education, vocational training and youth") by Articles 146, 147 and 148 of the ECT. The "geography" of the provisions regarding the ESF proves the close connection between social policies (Art. 136 and Art. 137 ECT) and cohesion instruments. Relevant for this reasoning is Title XV of the ECT regarding trans-European networks, given the reference made by Article 154 to the aims spelled out in Article 158, which opens the Title on economic and social cohesion. This sheds light onto the particular connection between market, infrastructure networks and social and economic cohesion and, in certain respects, it is also present in the White Paper on *"Growth, Competitiveness and Employment"*, the so-called Delors Report.

This part of the paper deals with the reductive vision according to which the cohesion policies cannot be brought back to the constitutional principle of solidarity. The possibility of including the cohesion policies in the welfare dimension of EU depends on this.

In fact, the argument that 'Title XVII…exclusively expresses an objective in terms of the narrowing of the gaps between various levels of economic development' (Balboni 2001: 53) is questionable for five main reasons. The first reason is the wealth redistribution factor (similar to the one characterizing social dynamics within the Member States), even if limited (at least directly) to the territorial level (similar to the principle of Article 119 of the

Italian Constitution). Another important example of this argumentation is provided by the Canadian experience of the equalization payments founded on section 36 of the Constitution Act of 1982.Traditionally, redistribution policies are founded on a common sense of belonging, a spirit of solidarity in a homogenous community: a confirmation of this could be found, for example, in the history of State-building according to Rokkan's theory.

Following his reasoning, the ethnic, religious, social and economic disparity of pre-modern Europe has been reduced by the creation of the relatively homogeneous Western European states.

The development of a Welfare State presumes the building of a strong national community and provides a substantive complement to political democracy.

Recently, scholars like Kymlicka, Banting, Alesina (2001) have studied the "tension" between redistribution and heterogeneity in a multicultural context, in order to understand if multiculturalism policies that recognize or accommodate ethnic groups tend to exacerbate any underlying tension between diversity and social solidarity, further weakening support for redistribution.

The limitation of the redistribution factor to the individual-targeting policies is a big mistake, which does not find confirmation in comparative experience. Another clear proof of the link between social policies and cohesion is given by the rules of the ECT regarding the ESF, as was discussed above. The third point is the change of the EU context. It seems evident that the latest trend of supranational constitutionalism is characterized by the proclamation of the EU Charter of fundamental rights (although it belongs to the vagueness of soft law). It is impossible to analyze here the several theories advanced in order to give it a strong legal value, but one can recall that it codifies many principles contained in ECJ's case law, or in the common constitutional traditions of the Art. 6 of EUT. Although the Charter does not represent an earthquake in the constitutional background of the EU, it does show its political attempt to overcome the economic- only version of Community life. Deep implications for the form of Union (as defined above) come from the horizontal clauses of this document. In this sense, if the Reform-Treaty enters into force the shift toward a strong supra-nationalism will be evident. A part of this is undoubtedly the language of rights (social rights specifically) which characterizes this phase of European life, and it is important to take care of this aspect when analyzing the

dynamics of the protection of European entities (citizens or countries). Last but not least, there are two other "philosophical" points.

The argumentation in question here shows a reductionist vision of the notion of "development", because it neglects Sen's advice about the link between development and human rights, as also identified in many European documents, limiting development to the improvement of productiveness/output. This vision is often refused by official documents of the EU, for example the publications related to cooperation for development. Nevertheless, it reveals a Manichean (black or white) vision of social sovereignty. It is thus contestable whether there was a complete loss of social sovereignty for the States (the idea of a negative integration as described by Scharpf, 1999: 51).

Such an approach cannot see a positive integration because it looks for an exclusive actor of this integration, while positive integration has a multilevel dynamics and it is articulated in a multilevel way: in this sense the State could play a fundamental role in social policies and, at the same time, the EU does not need to centralize this field of public activity.

5. The impact of social policies (including the cohesion policies) on the Form of Union. The adopted notion of democratic deficit

The debate on the democratic deficit has always been characterized by one great simplification: the reduction to the question of the lack of European Parliament's powers. This approach is questionable because it tends to isolate the question from other connected issues: the weakness of the European parties, the composition of the other European institutions, the restrictions to the access to the ECJ for actors such as the Regions, the perennial violation of the principles of conferral and subsidiarity and the lack of a clear system of legal sources.

As one can easily infer, several of these issues are strongly interrelated: for example, the problem of the violation of subsidiarity is linked to that of the lack of the Regions' direct access before the ECJ (Dani, 2004: 181 ff).

In this part of the paper I will try to connect the role given to the Regions by the cohesion policies to some of these democratic issues.

As a preliminary stage it ought to be said that it is possible to link cohesion policies to both negative and positive effects on the democratic deficit.

6. The possibilities offered by cohesion policies

Traditionally, the history of the EC has been ungenerous towards the sub-national entities, but more recently something new has happened thanks to a progressive improvement of the Regions in the EU context.

Cohesion policies, in fact, make regions very important actors in the economic dynamics of the EU and this could contribute to overcome the *Landesblindheit*.

The first proof of the impact of social policies on the Form of Union could be the revaluation of regions usually neglected in the legal dynamics in Europe.

The 'legal' territorial blindness (*Landesblindheit*) of the Union towards the Regions finds its confirmation in the wording of the Treaties (specifically in Article 10, ECT), where it is noted that the subjects of the Community legal order are the States, holders of the duty to collaborate with each other, which is instrumental for guaranteeing the effectiveness of supranational law. Nevertheless, the ECJ has partially reconsidered its own position following the increase in importance of decentralization processes within domestic systems. The *Konle* case, concerning a disagreement between a citizen and the Austrian administration, was the outcome of a preliminary ruling *ex* 234 ECT.

The Court also added that: 'subject to that reservation, Community law does not require Member States to make any change in the distribution of powers and responsibilities between the public bodies which exist on their territory'. The only condition imposed by the Community judge was that 'the procedural arrangements in the domestic system enable the rights which individuals derive from the Community legal system to be effectively protected, and it is not more difficult to assert those rights than the rights which they derive from the domestic legal system'. In its reasoning, the ECJ admitted that 'in Member States with a federal structure, reparation for damage caused to individuals by national measures taken in breach of Community law need not necessarily be provided by the federal State in order for the obligations of the Member State concerned under Community law to be fulfilled'. In the *Haim* case, the Court restated that 'Community law

does not preclude a public-law body, in addition to the Member State itself, from being liable to make reparation for loss and damage caused to individuals as a result of measures which it took in breach of Community law'. As was pointed out in the case law commentary (Saggio: 2001: 223-242) it still remains to be clarified whether it would eventually be possible to talk of an exclusive liability of a sub-state public entity or whether this liability will always be concurrent with the one of the State. Moreover, the relationship between the two liabilities remains to be clarified as well. These judgments must be read together with the interesting provisions of the Constitutional Treaty (and of the Reform Treaty) regarding the Protocol on subsidiarity, and finally the provisions in III-365, 3 (Art. 263 of TFEU after the possible entry into force of the Reform Treaty). According to this article: 'The Court of Justice of the European Union shall have jurisdiction under the conditions laid down in paragraphs 1 and 2 in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives'. It is difficult to understand the weight of the cohesion factor on this development, but it is interesting to recall the economic profile of the EC evolution. What is meant here is that in the history of the EC the legal label has always come after the economic change. In this sense, one could infer that the improvement of the legal status of the Regions is a consequence of their economic weight in the life of the Union. There are two main difficulties in this reasoning: first of all, the terminological issue, as it is unclear that economists and lawyers mean the same thing with the term "Region" or "subsidiarity". The problem is the lack of activism of the ECJ in this ambit: this element does not allow us to compare with the American experience the impact of welfare on the relation between the centre and periphery.

As many scholars have pointed out (see the researches and the projects of the *NewGov project*), the impact of the structural funds is, in fact, based on a curious mix between new and old techniques of governance. The aim of the European cohesion policies was rather to create a system of multilevel governance that would have included at least three levels: Community, Member States and regions, with the possibility for the latter to involve the local level too, further inserted into the cohesion policies as a genuine fourth level. Private actors, stimulated to invest by structural interventions, can produce a sort of multiplication factor that has an impact on the private sector, setting in motion a cycle of endogenous development that includes production innovation and generates employment

in underdeveloped areas. This virtuous circle would be, nevertheless, unimaginable without a programming activity acting as a framework for structural intervention. As Leonardi (Leonardi 1995: 222) recalls, one of the main advantages of the partnership consists in ending the State administrations' exclusivity in the implementation of the programs in strongly decentralized contexts. Obviously, not all the states have responded in a similar manner. It is in fact possible to identify three different patterns of response (Boccia et al. 2003, 23 ff.) to these new concepts at a national and regional level, and different outcomes are consequently attributable to every category of response. The first type of reaction lies in the 'rejection' of suggested procedures and models, having as a consequence a lack of growth (Lazio and Veneto); the second is a mere formal adaptation, with a consequent incomplete utilization of the programs' potentials and resources (Marche, Liguria, Friuli). The third kind, instead, implies a thorough understanding of the opportunities for the renewal of professional skills, for the socialization of procedures and rules, for not only a formal, but also substantial (and also large-scale) understanding of the suggested concepts, rules and procedures, with the consequent full utilization of resources and a maximum-growth result (Toscana) (see Fargion 2006 150 ff) .

The attention paid to territorial actors reveals the 'operational denouncing' of the territorial blindness (*Landesblindheit*) that has for long characterized the history of European Communities. Nevertheless, there is the risk of overlooking the problems encountered by many federal legal orders: the differences in their respective performances or, in the case of cohesion policies, the varying reaction times of the regions.

The history of these funds is characterized by a progressive shift towards new soft, involving models of governance, without abandoning the old and classical basis furnished by the binding legal acts and the involvement of the classical institutions (Parliament, Commission, Council).

All this permits the possible intervention of the ECJ in defence of the rights or competencies of the institutional actors.

Expressions of the old governance are as follows: the Treaty bases of the structural funds policies (Art. 2 ECT, Art. 158-162 ECT), the European Commission's right of proposal since 1987 and its duty of implementation; the unanimity voting on the project and the financial package in the Council of Ministers; the competencies of the European Parliament (its assent on fundamental decisions on structural and cohesion funds; the

codecision on ERDF and ESF; the consultation on EAGGF/guidance and FIFG); the possibility to give opinions for the ESC and the Committee of Regions; the competence on the jurisdiction for the ECJ and the control of the Court of Auditors for the financial aspects; the use of classic binding sources to give legal bases in this field (Council regulation and Commission decisions) (Vida 2005).

As already stated, over the years a new governance entered the procedures of the funds (most of all after 1987), consisting in the "intrusion" of the Commission into national development programmes and the assertion of the principle of partnership and conditionality. Another factor of novelty is the system of relationships (before inexistent) between Commission and Regions (directly thanks to the Commission initiatives, and indirectly thanks to the partnership); another fundamental element is the increase of sub-national actors' involvement in the implementation phase. This is connected with the more frequent use of soft instruments (e.g. Commission's communications; target-based tripartite agreements). The consequence of such policies is the growing awareness and the increasing role of the Regions, via the Committee of Regions.

In any case, the percentage of the opinions accepted does not reach particularly relevant percentages if compared with those in other fields (De Micheli 2006: 348-352).
On this last point, we can recall that the composition of the Committee does not correspond exactly to the notion of Region adopted by the NUTS, because of the lack of correspondence between the legal notion of region (usually mentioned in the Constitution of a country such as Italy) and the economic notion of Region.

All this confirms the schizophrenic nature of the system: the Committee has an important role, but it is not an effective representative body of the actors who should be represented.

The terms "*Region*" or "*regionalism*" are used in several contexts: *regional community*, *regional society*, *region-state*, *regional complex* (Hettne-Söderbaum 2002: 33-47).
Nevertheless, it must be said that a very interesting process is touching the new candidates States and the new member States: it is possible to note a progressive process of adaptation of the internal territorial configuration of the legal order to the criteria used by the NUTS to identify the Regions (Brusis 2002: 535 ff.) .

It seems clear that this uncertainness does not help the solution of the democratic gap.

Following the outcome of the research of an Italian group of scholars in public policies and political sciences (Fargion et al. 2006: 757-783), one can see the effects of "Europeization" (especially with regard to the Italian regions) on the sub-national (regional) level. First of all, the complexity of the procedures would give a very important role to the non elected/bureaucratic actors at the disadvantage of the representative actors, but the latter can instead be fundamental in the bargaining phases of the cohesion policies procedures thanks to their political skills:

> 'Due to their strong focus on problem solving and effectiveness, structural funds clearly appear to privilege the 'output' phase of the representation process, rather than the 'input' phase' (Fargion et al. 2006: 760).

In conclusion, one can generally say that the cohesion policies contribute to improve the regional dimension of the European Union, with an evidently positive outcome to counter the democratic deficit. At the same time, the mechanism of such policies undeniably contributes to bolster the technocratic side at the regional level, spreading one of the most important viruses of the democratic deficit at the supranational level.

Another factor which should be stressed is the lack of sufficient transparency and accountability in the cohesion policies procedures , which is a negative side of partnership and the involvement of several actors, and of the softness of the instruments used[IV]:

> 'First of all, do the mechanisms of representation embodied in and promoted by Cohesion Policy contribute to the export from the European Union to the sub-national level the well known problem of a democratic deficit? Or again, in broader terms, is the European 'governance model' a real solution for solving the problem of such a deficit? In this regard, our research revealed the difficulties for less organised/powerful interests in gaining access to the decisional process and the implications – in terms of democratic accountability – of the dominance of non-elected actors in representation activities. In the new procedural context the responsibility for decisions is dispersed and the chain of control becomes unclear' (Fargion et al. 2006: 779).

The last point allows us to introduce another issue related to the nature of the means used, in the implementation phase above all.

Previous studies have shown that the flexibility obtained thanks to the soft means implies the difficulty for the European Court of Justice to guarantee the respect of the Treaties (Hatzopoulos 2007: 309-342).

As cases like *Mangold*[V] (which appeared after a long series of cases where the ECJ tried to avoid the comparison with the new governance[VI]) show, when the ECJ was forced to face issues relating to which soft legal instruments were involved (albeit partially), it resolved the case referring to the general principles[VII].

This shift in the legal reasoning of the ECJ has, however, a negative side, because it contributes to increase the discretion of the judgments, to decrease controllability and to change the nature of the ECJ approach, which is traditionally more oriented to the pragmatism required by an economic law such as that of EU law .

Another problem linked to the spreading of soft law is the less important role played by the traditional institutional actors (first of all the European Parliament), contributing to the weakening of the institutional balance: the risk is to sacrifice the role of the Parliament in the name of flexibility and this element does not support the reasons of the democratization of Europe.

While such problems are now more evident for the Open Method of coordination strategy than for the cohesion policies lines , it seems nevertheless important to point out this risk.[VIII]

7. Conclusions

In this study I tried to analyze the relationship among integration, constitution and Welfare in the supranational context. As Smend has already stressed the strong relation between the State and the Constitution ('the integration belongs to the content of constitution') with regard to the national context, Cappelletti, Weiler and Seccombe (1985) studied the supranational dimension of integration (conceived as the proceeding of integration and as the outcome of such a process).

After having included the cohesion policies in the supranational dimension of Welfare, I pointed out the consequences of the structural funds' functioning on the form

of Union (as defined in the first part of the work: axiological dimension of the EU and relationship among the levels of governance and government): empowerment of the role of the Regions, involvement of several non-state actors in the phase of implementation; strengthening of the bureaucratic actors at local and regional level because of the complexity of the procedures, despite the important role of the elected actors in the phases of political bargaining; limited possibility of intervention for the ECJ, due to the spreading of new governance techniques and the soft legal instruments used.

The Regions are essential in order to create a common substrate for the decision-making processes and policies. If a society is cohesive, public choices are simpler and, above all, there are weaker resistances towards the common policies – although this does not produce uniformity nor signifies the end of constitutional tolerance. In short, regional cohesion and integration are two sides of the same coin.

Had the formula "integrative regionalism" not already been used, one would have proposed it to describe the fundamental contribution of the Regions to the reasons of integration, which this paper has ultimately endeavored to stress.

Against this background, the polisemy of the notion of Region contributes to increase uncertainty: the role of the Committee of Regions inevitably suffers from the non perfect identity between the economic and the legal notions of Regions in Europe.

Within this context, a very important role could be played by subsidiarity, but this point requires a preliminary linguistic remark.

By looking at the language used in the documents concerning the structural funds, it seems useful to remark that the subsidiarity principle seems to be limited to its "negative" aspect: the preference conferred upon the subject closest to the citizen.

At an economic level, it has been said that 'the principle of subsidiarity means that the production of public goods should be attributed to the level of government that has jurisdiction over the area in which that good is public' (Padoa Schioppa, 1995: 155).
Starting from this definition, that seems to neglect the 'activist' side of the principle (that is, the one postulating the intervention of the central level for the realization of the mentioned conditions), we can appreciate the remark made with regard to additionality and to a partnership that implies a collaboration among the European, national and regional administrations.

The subsidiarity principle, due to its physiology, requires a system of competences at least tending towards a repartition, and at the same time presupposes, as was pointed out, an "integrated" system like, for example, a federal system of a cooperative type. This would explain why, within the Community context, subsidiarity has operated as an *'accelerator of centripetal forces'* (Baldassarre) rather than as a factor of valorization of the de-centered realities, in the absence of a formal catalogue of competences. Subsidiarity and competence are not, nevertheless, in a relationship of identity: in fact, it has been said that the principle of subsidiarity is not intended so much for the formal allocation of *a priori* competences, but rather for the *a posteriori* legitimation of the exercise of competences beyond those formally attributed (as also pointed out in Massa Pinto 2003: 81)

Subsidiarity has successfully operated in a context such as the German one, which does not define competences in the finalistic manner (On the enumeration techniques, see Carrozza 2003: 69-124) as the ECT does (as opposed to the French model). This worrying mingling of legal styles explains the destabilization factor that could be introduced by the subsidiarity principle. This is mainly because of its "surreptitious" substitution of the flexibility clause, that has allowed the Union (and before it the Community) to acquire 'slices of competence', transversally instrumental to the realization of the declared objectives, without the procedural guarantee of unanimity.

All this appears against the background of a European case law which proves extremely elusive about the principle of subsidiarity, and the impossibility for the regions to challenge directly in front of the ECJ those Community acts considered to be in violation of their competences. The Court of First Instance and the ECJ have in fact always preferred not to deal with this ambiguity frontally, solving the cases challenging the legality of Community acts in the light of other arguments (perhaps already tested), without calling into question the issue of subsidiarity.[IX]

In this respect, it has also been said that the principle of subsidiarity acts as a criterion for the attribution of competences, because it 'shifts, even if not in a permanent and formal manner, the level of government that must intervene'(Massa Pinto 2003: 82), and operates as an element of flexibilization in a context generally tending toward rigidity (Bin1999: 169 ff).

Subsidiarity (together with proportionality) is a post modern criterion of allocation of power and of resolution of legal antinomies: its flexibility is a resource but, at the same time, confers the constitutional adjudicators a great and discretional power.

The Court involved in the justiciability of such a principle will be forced to verify the necessity of higher level substitution by carrying out a costs/benefits test.

The only way to limit the discretion of the judge seems to be to pose procedural guarantees such as those proposed by the Constitutional Treaty and contained in the "*Protocol on the application of the principles of subsidiarity and proportionality*".
As a result, a form of political monitoring called "early warning mechanism" was provided in that Protocol.

According to it, the Commission should transmit a draft legislative act to the national parliaments, giving them six weeks to determine if there is a violation of subsidiarity. If one third of the parliaments decide there is a violation, the Commission is required to reconsider the proposal.

Obviously, the proposal of the Convention does not exhaust the possible solutions to guarantee the role of regional actors at the European level.

Probably the contribution of the constitutional lawyer could consist in the attempt to furnish institutional and legal techniques aimed to rationalize the system and to solve the paradox of the flexible criteria: they are both a resource and a threat for the European legal order.

In this sense, it seems useful to recall the solutions suggested by the Italian Constitutional Court[X]: subsidiarity requires a "fair cooperation" ("*leale collaborazione*") between the territorial actors, concerted practices and bodies and, finally, a system of agreements among the institutional actors.

Despite the clarity of such a judgement, the real problem is to apply and enforce such principles, and many solutions were proposed: the creation of new committees and institutional actors? The improvement of already existing institutions? Is it possible to transplant institutional solutions already experimented within national contexts (in Germany, for example) to the supranational level?

Unfortunately, this point cannot be discussed in depth here, but it was important to mention it in this paper, at least to stress the importance of the sub-national (regional) level for the constitutional discourse of the EU and for the changing Form of Union.

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[I] Definitively, it concerns the different "options/techniques" offered in order to guarantee the separation of powers (e.g. parliamentary regimes versus presidential regimes).

[II] Defined as: "*Abstract, disjointed, increasingly fragmented, not based on stable and coherent cohalitions of issues or constituencies, and lacking in a clear public space within which competitive visions of the good life and pursuit of self-interested legislation are disused and debated*", Caporaso 1996: 29 ff.

[III] *"For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:*

k) the strengthening of economic and social cohesion;"

[IV] *"Evaluation and monitoring mechanisms – which are supposed to guarantee greater transparency – are not a solution to this problem, as they leave the initial phases of the process largely in the dark precisely when critical decisions are taken on who will benefit and who will be left out from the structural funds game",* Fargion et al. 2006*:* 779).

[V]ECJ, Case C-144/04, *Mangold*, 2005, ECR, I-9981

[VI]Court of First Instance, Case T-188/97 *Rothmans v. Commission*, 1999, ECR, II-2463; ECJ, Case C-293/97, *Standley and Metson*, 1999, ECR, I-2603; Court of First Instance, Case T-135/96, *UEAPME v. Council*, 1998, ECR, II-2335.

[VII] *"Since EC hard legislation will be rare in fields in which some EU coordination takes place, the Court will be obliged to control national measures by reference to general principles and fundamental rights, in order to effectively protect the latter. This, however, is not a commendable development, at least by currently applicable legal standards, and all the judgments above have been strongly criticized"* (Hatzopoulos, 2007, 316).

[VIII]"*The question of how the use of soft law affects the institutional balance must also be addressed, as the increasing use of instruments not provided for in the Community legal system has a detrimental effect on the use of legislation. This means that more decisions are made outside the framework of the formal Community decision-making process, in which the institutions have been carefully assigned their proper role and power, to reflect a certain institutional balance"* Senden, 2005).

[IX]ECJ, Case C-415/93, *O'Hara/Council and Commission*, 1994, ECR, I-5755; ECJ, Case C- 84/94, *United Kingdom/Council,* 1996, ECR, I-5755.

[X]Corte Costituzionale, Sentenza n. 303/2003, www.cortecostituzionale.it

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Which European Response to the Financial Crisis?

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Abstract

The reaction of the European Union to the financial crisis consisted mainly in uncoordinated national plans. A real European recovery plan would have been more effective, but it was not possible because the EU has not a federal budget and a federal government. There are some European public goods – such as monetary and financial stability – which must be supported, in the last resort, by European resources. If the European Union cannot count on its own resources, the stronger States of the Union will be obliged to carry out the role of "lenders of last resort". Moreover, the EU needs a federal government to speak, on equal terms, with the other continental powers. In this essay, it is suggested that the EU should propose to build a "world eco-monetary union" – reforming the IMF in order to substitute the dollar as a reserve currency with the SDRs – to guarantee monetary and financial stability and a sustainable development for the global economy.

Key-words:

Financial crisis, monetary and financial stability, globalization, EU

1. Who is governing the European economy?

In the midst of the financial crisis, on October 21, 2008, the rotating President of the European Union, Nicolas Sarkozy, in his speech to the European Parliament stated that Europe needs an economic government, because "we have endowed ourselves with a currency, a central bank, a single monetary policy, but not an economic government deserving such a name". However, in Sarkozy's opinion, "the true economic government is the Eurogroup, that holds meetings at the level of the Heads of State and government".

In this essay I will try to show that Europe needs a government of the economy, but that government cannot limit itself to inter-governmental coordinations in the Eurogroup. Europe needs a true democratic government, because only a government supported by the citizens' consensus can get the necessary powers – in particular the fiscal and budgetary ones – to cope with the present grave international crisis. In fact, the President of the European Central Bank, Jean-Claude Trichet, in his lucid reconstruction of the financial crisis, has very clearly indicated the limits – and the alternatives – of today's European economic institutions: "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).

The necessity of a European democratic government is confusedly felt by citizens, due to the hybrid institutional formula used in making European decisions. There are competences, like foreign policy, that are totally dealt with by the inter-governmental method with unanimous decisions, as happens in international organizations. There are other competences, like those regarding the internal market, where decisions are taken by the community method, with the double majority of the Council and the European Parliament. When the co-decision between Parliament and Council has been reached, the Commission acts as the Union's executive, or government. In that case, if the Court of Justice too is included among the Community institutions, the European decision-making process proceeds from a federal core, as was originally conceived by Jean Monnet[I].

Today, the federal role of European institutions is confined to the back seat by a wave of Euro-skepticism. The European public opinion receives a distorted image of European governance. For the citizens, the seeming European government is the one lit up by the mass-media spotlights: the European Council and the sensational statements pronounced by national leaders. However, the other Europe, that of supranational institutions, albeit in the shadow, is the only one able to take common decisions and make them operational, of course within the limits set by the treaties. One could, therefore, reverse the interpretive criterion adopted by political realists, who consider as real the existence of the national States only, and as a superstructure with no autonomy the Community institutions. On the contrary, only thanks to the existence of the European Union could the European national governments hold the financial crisis in check, which otherwise would have swept away the fragile 27 national economies. The existence of a European supranational government does not mean, however, that it also has sufficient powers to efficiently cope with today's challenges. In fact, the study we wish to carry out will concern mainly the powers that the national governments shall entrust to the Union, in order for it to both put in place an effective domestic economic policy, and face the crisis on the international scale. The crisis is world-wide. Not only finance has a global dimension. Also an environment-friendly reform of the economy is a challenge that the European Union will not be able to win alone – likewise the US government – unless it negotiates the necessary remedies in cooperation with the other countries of the Planet.

2. The recent and remote causes of the financial crisis

The recent causes and the developments of the financial crisis have been well described by Alan Greenspan, a non-neutral witness of the crisis. "Global financial intermediation is broken. That intricate and interdependent system directing the world's saving into productive capital investment was severely weakened in August 2007. The disclosure that highly leveraged financial institutions were holding toxic securitised American subprime mortgages shocked market participants. For a year, banks struggled to respond to investor demands for larger capital cushions. But the effort fell short and in the wake of the Lehman Brothers default on September 15th, 2008, the system cracked. Banks, fearful of their own solvency, all but stopped lending. Issuance of corporate bonds,

commercial paper and a wide variety of other financial products largely ceased. Credit-financed economic activity was brought to a virtual standstill. The world faced a major financial crisis" (Greenspan, 2008).

The remote causes of the crisis are not mentioned, however, in Greenspan's brief reconstruction. There are at least two of them which date back to the 1970s and 1980s, one linked with the other. The first consists in the resuming of liberal thought, also called neo-liberalism, launched by the economic policies of Lady Thatcher's government in Great Britain and by Reagan's in the USA. A particularly important chapter of the new economic policy was the application of the efficient market paradigm to the financial sector. The less the financial markets are regulated by the public sector, the more easily private savings will find the best investment channels. Entrepreneurs will thus enjoy low interest rates and could start up activities that the banking sector, tightly regulated, would prevent them from doing or would allow at high interest rates. The efficient financial markets paradigm did foster a substantial reorganization of the financial products markets in the US and, indirectly, in the rest of the world. That was a revolution sanctioned by the repeal, in 1999 by the Clinton administration, of the Glass-Steagall Act, approved in 1933 as a remedy against the speculative excesses that had caused the great depression. The Glass-Steagall Act was regulating commercial banks in a different way than investment banks. While the former had the primary function to collect private savings and to loan them according to prudential criteria, the latter could take capital risks by investing in quite profitable activities. Also thanks to the end, in 1999, of the distinction between commercial banks and investment banks, it became possible to extend the variety of new financial products and to increase the credit multiplier in respect to the banks' invested capital. Financial assets were repackaged in groups classified according to their risk level and re-deposited with another bank. In this way, banks were able to rid themselves of their asset-backed securities (ABS), apportioning risks over a wide public and getting fresh money that could be further invested. The illusion was thus created of an almost limitless increase of the volume of loans and of the uselessness of a prudential control by the overseeing authorities, because the efficient market was capable of guaranteeing an almost perfect relationship between securities values and their yield, which included of course a reward for the risk, accurately calculated with econometric methods[II]. The financial crisis has had the secondary effect of discrediting the conceptual bases of the "efficient markets" paradigm.

The second remote cause of the financial crisis concerns the role of the dollar as the international reserve currency. This aspect has not, so far, been adequately highlighted by analysts. The fixed exchange rate system set up in Bretton Woods was replaced with the so-called flexible exchange rate system, but it did not put an end to the use of the dollar as the currency of international commercial and financial exchanges. Therefore, the US currency's *exorbitant privilege* denounced by De Gaulle in the 1960s continued. In sum, the USA could accumulate significant deficits in its balance of payments (its current accounts balance was in recent years higher than 6% of GDP), compensated for by capital flows attracted to the USA by the possibility to get safe interest rates with investments in Treasury bonds or commercial and productive activities. As long as the dollar performs the function of international currency, the countries using it find it convenient, and sometimes necessary, to accumulate a portion of their reserves in dollars. Those dollars would remain unproductive at home, whilst they can yield an interest if invested in US securities. Of course, in order for that situation to materialize, there must be a great amount of dollars that circulates outside the United States, and there must be countries willing to finance with dollars their surplus of current accounts. In the 1980s this function has been mostly performed by some industrialized countries, like Germany and Japan. From the 1990s on, this role has been taken on by some emerging countries, in particular China, which has accumulated, as reserves, an enormous amount of dollars. Such global imbalances (see the *Appendix* for an analysis of the so-called *global imbalances*) have allowed a spectacular growth of the international financial market, but have also generated the illusion of an easy credit, both private and public, in the USA. As to the growth of the credit market, suffice it to note that the derivatives market amounted to 75.000 billion dollars in 1997, about 2,5 times the world's gross production, while ten years later, in 2007, it amounted to 600.000 billion dollars, that is to say 11 times the world's gross production (Minton Beddoes, 2008: 10). As to the US indebtedness, the sum of the public and private debt in the US amounts to 350% of its GNP, while in Europe it is half that (Altomonte, Nava, 2008: 5).

In order to remedy the damages caused by the financial crisis and prevent it from occurring again in the future, it is necessary then to change the rules of international finance, abandoning the myth of the efficient market paradigm; to face the difficult problem of overcoming the global monetary imbalances, and, finally, to relaunch international economic cooperation, averting any instinctive resort to protectionism. These

three questions cannot be dealt with by one country alone. The USA is, and will remain for a long time, the preeminent economy on a global scale, but cannot pretend any longer to export financial and monetary rules that jeopardize the entire world economy. All the countries, to a greater or lesser extent, have been hit by the crisis caused by toxic securities. Regulating international finance, the international currency and sustainable development are three aspects that must be addressed jointly.

3. A European lender of last resort without a European Finance Minister

The creation of the European monetary union did not solve the problem of the role of the European Central Bank in emergency situations. The monetary events, in particular during the 19th century, showed that the centralization of the issuing function of paper-money and the control of the volume of credit are indispensable for assuring the stability of a monetary and financial system. Free banking, where it has been tested, has proved to be a failure. However, Art. 105.5 of the Maastricht Treaty leaves the competence of "prudential supervision" to the national level. Only after a unanimous decision can the Council "confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings" (Art.105.6). But that possibility has remained so far a dead letter. The ECB has always asserted, since its institution, the necessity of a European-level supervision. In 2002 its President, Wim Duisenberg, asked to widen the competences of the ECB, but the Council of Finance Ministers refused. However, the recommendations of the Lamfalussy Report, contemplating the institution of European *ad-hoc* committees for supervision, were accepted. But those committees lack powers of intervention due to the simple reason that the rescue or the bankruptcy of a credit institution may require to resort to national public money. Such a regulation of supervision powers is patently contradictory. Tommaso Padoa-Schioppa (2004: ch. 5) observes that financial institutions are more and more exposed to shocks originating beyond national boundaries, while in case of a spreading crisis the infection vehicles produce trans-national effects much bigger than in

the past. Few people now, actually, refuse to admit that in the end a single market with a single currency does require a single supervisor, and not just harmonized rules.

When, at the end of 2008, the financial crisis spread in Europe, it soon became apparent that the ECB will thoroughly carry out its role of lender of last resort, but also that the liquidity crisis was accompanied by an insolvency crisis. The British government nationalized Bradford & Bingley. The governments of Belgium, The Netherlands and Luxembourg invested 11,2 billion euros in Fortis; Dexia received an injection of capitals by the Belgian, French and Luxembourg governments. Moreover, the Irish government announced an unlimited warranty for all of its bank deposits. A European coordination of the national initiatives was becoming urgent, and it was suggested to institute a European emergency fund to rescue the credit institutions in difficulties. In fact, the French Presidency of the Union, on the occasion of its convening an emergency meeting in Paris on October 4, with a strange institutional formula (a European G4), hinted at a proposal to eventually create a "European federal Fund" amounting to 300 billion euros. But the proposal was rejected by the German government, so that the crisis of the European banking system went on, until a second meeting was convened in Paris on October 12, this time with all the members of the Eurogroup, and, in addition, the European Commission, the ECB and the British government, which in the meantime had launched a rescue plan for a selected group of the bigger British banks. On that occasion, it was decided that the governments will provide warranties to the main banking groups for their issuing of securities for a five-year period, and that they will participate in refinancing the capital of the banks in worst difficulties. In substance, the idea was sanctioned that they will let no bank go bust. In addition, the level of protection of bank deposits was jointly set at 50 thousand euros, and a commission was instituted for the reform of the supervision system of the credit and financial sector.

These decisions were successful in calming down the markets and in reassuring the savers. In the following days, the governments announced a series of national intervention plans for a total of 1.873 billion euros (the US plan amounted to 700 billion dollars), about 15% of the European GDP (EU-15). The European governments, acting in a concerted way, have thus succeeded in checking the acute phase of the crisis, but at least two considerable breaches of the European institutional structure have emerged. The first concerns the resorting to national aids to the banks in difficulties, in contrast with the

Treaties' norms forbidding State aids, unless authorized by the Commission. Of course, the Commission stepped in, ex-post, but it is certain that the national governments will exploit any possible means to help their enterprises. It may be a disguised return to national protectionism. If such violations become systematic, the principle of the single market will be put in question. Secondly, the lack of a European Finance Minister (and of an adequate Community budget) has represented a power-vacuum that jeopardized the survival of the monetary union, and an excuse for resorting to massive national interventions, probably much higher, in their totality, than the amount of an efficient European-level insurance.

Now the discussion has begun on the reform of the European supervision system. The Belgian Prime Minister Leterme (2008) asked for the institution of a European Fund, subsidized by the EIB. "At the end of September – Leterme observed – the Belgian financial sector was shaken by a serious crisis. Fortis, our main bank, Dexia, the third-biggest, and an insurance company have been hit by the consequences of the international financial crisis. These institutions own activities equivalent to about three times the Belgian GDP, and the value of their deposits is higher than the national income". Belgium would thus not be in a position to cope, alone, with a second crisis. The call for a European Insurance Fund seems to be founded on sound reasons and other experts too (Gros, Micossi, 2008; Lanoo, 2008) support it, together with the proposal to institute a European system of financial supervisors based on the model of the European system of central banks, keeping a tight coordination between European and national authorities.

These proposals do go in the right direction, but they try to sidestep a structural problem that concerns both the supervision of the credit and financial market[III], and the entire economic policy of the European Union, namely Europe's budgetary powers. Financing the European Fund through the European Investments Bank represents a screen behind which the question of the financing of the European fiscal resources comes up again: if a banking crisis will occur again, which political authority will in the end authorize the interventions? The resources of the Fund could be used by all the countries or by some of them only? A European public good – like the stability of its monetary and financial system – must be assured by European fiscal resources. In fact, some economists have come to this logical conclusion (Schinasi, Texeira, 2006). The solution to the problem is simple. There must be a European budget, financed by own resources, the management of which is entrusted to the European Commission, responsible before the European

Parliament. The European budget should contemplate a heading for urgent and extraordinary interventions[IV]. The use of funds in emergency situations should be decided by the Commission – at the request of the European Finance Minister – after seeking an opinion from the ECB and the supervising body. The Commission shall be accountable of its decisions to the European Parliament. This reasonable procedure has never been seriously considered so far, because it is at odds with the taboo of fiscal sovereignty, which governments want to keep among the exclusive national competences.

4. A European Keynesian plan with national fundings

The dangers of the financial crisis and the instinct of survival drove the European governments to ditch their deep-rooted prejudice against supranational Keynesian policies. To understand the situation – partly produced by the prevailing academic doctrine of the last decades, focusing on the priority of the supply policies – one has to go back to the Maastricht compromise of 1991, when it was decided to make a monetary union without increasing the Union's budgetary powers. The Stability and Growth Pact, agreed in 1997, transformed the compromise into a Treaty that was forcing the national budgets to abide to some fiscal parameters. Moreover, it is worth recalling that the Pact was conceived in order to assure the "monetary and financial stability", and the word "growth" was added at the last minute for silencing those who would have liked less rigidity. The non-explicit meaning of the Pact is that fiscal policy and growth must remain strictly national competences. The European Union deals with growth, development and employment only from the viewpoint of coordinating the national programs. Jacques Delors, the Commission President who carried the Maastricht Treaty through, was the first to realize the deficiencies of the compromise, and tried to remedy by proposing in 1993 a Plan for "Growth, Competitiveness and Employment" (CEC, 1993) which should have given a long-term impulse to the European economy, allowing it to create by the year 2000 more than 15 million new jobs through a series of structural investments in trans-European networks, in information technology, in research, in education, in professional training. It is interesting to observe here that the Delors Plan was contemplating an overall annual expenditure for the period 1994-1999 of 20 billion ECUs (euros), or about 0,33% of the

European GDP, of which 5,3 charged to the Community budget, 6,7 provided by the EIB, 7 financed by Union bonds and 1 billion by bonds secured by the European Investment Fund. It was, in essence, a plan with investments addressed to increase labour productivity and the competitiveness of the European economy, hence aiming more to stimulate supply than to support demand. In any case, the Council of Finance Ministers (Ecofin) soon took it upon itself to bury the project, refusing to provide money to it, despite the support of the trade unions and the European Parliament. Only in 2000, after years of difficult growth, in particular if we compare it with the vigorous one of the USA, was the so-called Lisbon Strategy launched, which is completely based on the philosophy of the Stability Pact, i.e. it gives the Commission the mere task of coordinating the national plans: growth is dependent on the impulse provided by the governments of the member States. This strategy proved to be a failure. The national governments pursue national, not European priorities. The European economy continued to devote scant resources to research and innovation, to have high unemployment levels and a low level of public and private investments.

The recent Commission plan "A European Economic Recovery Plan" (CEC, 2008), approved by the European Council on December 11-12, 2008, differs from the Delors Plan since it does not aim to have a sustained growth in the medium-long term, but "to inject purchasing power into the economy, support demand and stimulate confidence". It is a "macro-economic, anti-cyclical", short-term plan: its effectiveness should be tested in the course of 2009, and the programmed financing covers the two-year period 2009-2010. Its total amounts to 200 billion euros, equal to 1,5% of the European GDP, of which 0,3% charged to the European Union and 1,2% to the member States.

The European share of the plan (0,3% of GDP) is innovative because it is a complement to the second project approved by the European Council, the "energy-climate package 20-20-20", i.e. the commitment to reduce greenhouse gas emissions by 20%, to reach the 20% level of renewable energies and to save 20% of energy by 2020. The Commission plan provides a series of investments whose purpose is not only to make the European economy more competitive, but also to "green the economy", transforming it into an economy at low consumption of carbon dioxide, thanks to an increase of energy efficiency, to energy saving and to the introduction of clean technologies, in particular in the building and automotive sectors. The social aspects of the plan concern the creation of

new jobs and the protection of jobless workers through a strengthening of the European Globalization Adjustment Fund and the European Social Fund. Special terms for financing and supporting innovation are provided to small firms. In addition, it was decided to start up a "2020 Fund" for energy, climate change and infrastructures ("Daisy Fund") which will co-finance, together with national institutional investors, some innovative projects.

There is now to express some criticism of the Plan for the recovery of the European economy. The European financing of the plan is almost entirely entrusted to the EIB, which is authorized to issue bonds 30 billion euros worth in the years 2009-2010. The other grants come from already allocated money in the Community budget (however, 5 billion euros are taken from unspent sums that should have been distributed to the member States). The rest of the plan (about 170 billion euros) should be financed by the member States themselves, who have pledged not to exceed the limits imposed by the Stability Pact. Consequently, not all of the countries will be able to contribute with the same effectiveness to the economic recovery. Countries like Germany, with balanced accounts and a low public debt, have a wide margin for maneuver. Countries like Italy and Greece, heavily indebted, will hardly be in a position to contribute to support Europe's aggregate demand. In fact, a first estimate tried by some economists (Saha, von Weizsäcker, 2008) of the overall volume of the plan's fiscal impulse in the year 2009 gives a figure of 0,64% of the Community's GDP, while it reaches 1,18% if also the credit-related incentives are taken into account. Secondly, there is to note that if the part of the plan financed by national investments is high, free-rider behaviors will be encouraged on the part of some governments that, without formulating any national plan, expect to reap the benefits – given the high level of integration of European economies – deriving from the incentives to aggregate demand in other countries. The remedy to that drawback is simple. It would suffice to increase the percentage of European expenditure to 50% or more, ruling that the European investments be co-financed for the remaining amount by national resources. Should the European coordination be ineffective, the national plans will result inconsistent with each other and the sum of the national incentives to growth will be lower than the European incentive to growth produced by the same level of expenditure[V]. Thirdly, there is to observe that the part financed by European resources is kept small, probably due to the governments' refusal – expected by the Commission – to finance it by issuing Union bonds, as was provided for in the Delors Plan of 1993. Fourthly, the less-virtuous countries

will be forced to obtain money from the financial market, at less favorable conditions than more virtuous countries will get, whilst a more efficient European plan would have shared more equitably the costs of its financing. Finally, as our fifth observation, if the part financed by European resources is small, the old doctrine – that growth is led by "locomotive economies" like Germany – will prevail in the end. This is a serious snag, because it encourages on the one hand free-rider behaviors in some countries, and on the other it drives "virtuous" governments to refuse to pay for other countries too. In sum, the scantiness of European resources feeds national selfishness and produces effects liable to bring about the failure of the entire project.

Even in this case, as in the one before regarding the institution of an emergency fund, the decisive obstacle to the effectiveness of a European intervention derives from the non-solution of the fiscal problem. The European Union should use own resources. However, this is an abstract principle, proclaimed in the Treaties but disregarded in practice. A substantial part of the European budget, more than 70%, is financed by national contributions, and the governments require that the budget shall not be higher than 1% of the Community's GDP. The European budget, which must be in balance, is seen as an appendix to the national budgets, not as an instrument of the European economic policy. That is why the additional financial resources necessary to cope with the economic crisis have been obtained through the EIB, a body subordinate to the national governments. But in this way, the European Parliament and the Commission are deprived of a margin for maneuver that would allow the political parties and the citizens to contribute with their proposals to establish the guidelines of the European economic policy, including its relative importance with regard to national economic policies. The cost of Europe's bad governance is a disjointed Union, unable to carry out efficient policies.

5. Which European proposals for a new world economic order?

The criticism just addressed to the European plan for economic recovery concerns its internal coherence. There is a more general aspect to consider, to evaluate its effectiveness: the financial crisis has had global effects, because it is causing a sizable decrease of world trade and production. Any partial plan, even covering economies of continental dimensions like those of the USA, the EU, China, Russia, etc., will not be

effective unless the problem is dealt with in its global dimension. We limit ourselves to two considerations. The first regards the depth of the financial crisis and its duration. However much past history can provide lessons for the present, banking crises occurred after WWII show that the drop in real estate and share prices lasts for several years, that the drop in employment reaches levels higher than 7% of the average, and in the production sector even 9%; finally, that public indebtedness can reach levels 80% higher than the present ones, because governments try to limit through fiscal policy the harmful consequences of the crisis (Reinhart, Rogoff, 2008). These average values apply to crises occurred in one or more countries, but not to a global phenomenon, barring the Great Depression of 1929. There are then reasons to fear that the consequences of today's crisis may be much more harmful than those of the past. Secondly, the internationalization process of the economy, even if it was ill-regulated, did allow for the establishment of a division of labor articulated among numerous countries. The dense worldwide network of the production system is accompanied by an indispensable macroeconomic organization, which depends on the consumption and saving styles of populations, as well as on the role of the State in the economy. In the course of time, international macroeconomic relationships are built, concisely revealed by their respective balance of payments, among countries with a surplus, i.e. with exports greater than imports, and countries with a deficit. If the world's aggregate demand is expanding, international trade grows, consumption and investments grow, and the countries with a deficit can count on capitals coming from the countries with a surplus. But a harsh crisis can upset the picture. Countries with a surplus, like Germany, China, Japan, etc., will see foreign demand of their products decline. Countries with a deficit, like the USA, Turkey, South Africa, etc., risk suffering a drastic reduction of the financial flows coming from the countries with a surplus, now engaged in supporting their own internal demand. Internal fiscal policies aimed at relaunching demand are necessary, but they risk being a palliative, because every country will try to use public money to support domestic production and employment. The US government will support the US automotive industry, not the European automotive production; the European Union will do the opposite. The result will be that some enterprises will survive only thanks to public subsidies. In other cases, countries will try to stimulate exports by devaluing their currency. The fabric of international division of labor will get torn in many places and world productivity will be reduced. The world will become poorer, on average. In addition, the

strategy of the locomotive countries which draw the world recovery will not have many chances of success. Some economists reckon that an eventual US plan of the size of 5-6% of GDP will not succeed in filling the deflationary demand gap in the USA (Godley et al. 2008). The summation of a series of national expenditure plans, in which the investments aimed at stimulating national employment are favored, provides a production increase (thanks to the Keynesian multiplier) lower than what is possible to obtain with one expenditure plan coordinated on a world scale (Montani, 2008: 186-191).

The political and social consequences of this foreseeable long depression are worrying. Unemployment will grow, social protests will increase, migratory flows will be hindered, measures will be taken to protect national production, as refusing imports (which steal jobs), and to seize other people's aggregate demand, by devaluing one's own currency. The emerging countries will see their hopes of development fade away beyond the horizon. Everywhere, nationalist, populist and xenophobic movements will become stronger.

The question of a European government cannot, therefore, be limited to the aspects discussed above. A government is also instituted with the aim to support the interests of a political community in world politics. In fact, the European Union, aware of that necessity, has pressed for a worldwide reflection for a new Bretton Woods; it supports the resuming of trade negotiations in the framework of the Doha round, and is preparing itself for the after-Kyoto, as far as the fight against climate change is concerned. However, it is necessary that the European Union gives itself a consistent strategy for the reform of the international economic order and speaks with only one voice in world conferences. These two requisites are lacking, at the moment.

Let us consider the first problem. People say that the international organizations created by the USA after the war are inadequate, but it is not clear in which direction we have to proceed for reforming them. The international organizations did function, although with many limits, mostly thanks to the US hegemonic power assuring some indispensable international public goods, like security (at least for the western world), freedom of exchanges and international monetary stability. Without those public goods an international order degenerates into anarchy. Today, the same public goods must be guaranteed by other institutions, without an hegemonic power, because it is not thinkable that one country, however important, can cope with the planetary challenges of the 21st

century: an agreed action is necessary, to be shared with emerging powers like China, India, Brazil, as well as the European Union, the USA, Russia, Japan and the smaller countries that want to participate in the management of world affairs. In other words, a multipolar world can be built, where a peaceful management of interdependence is realized. The crucial problem of the 21st century is, in fact, to reconcile peoples' independence with their interdependence.

Europe can give a significant, perhaps decisive, contribution to the building of a new world economic order. The European integration process was initiated to solve a problem similar to the one the world must face today: assure peace in Europe, in the first place between France and Germany, through the creation of supranational institutions, with powers limited to the economy (the European Coal and Steel Community), but real. Today the European Union should promote, on the world scale, the creation of institutions providing supranational public goods: monetary and financial stability, ecological reform of the economy, trade cooperation for the development of emerging countries and, finally, international security. In the management of these worldwide public goods all the countries should participate with equal powers, independently of their wealth and size. The only requisite shall be to underwrite a Pact where the mutual rights and duties are specified. In sum, Europe should propose a *World Eco-monetary Union*, where "eco" is an abbreviation of both economy and ecology, because those two dimensions of human activity are today tightly connected. The difference between the project of a World Eco-monetary Union and today's international organizations consists in the granting of real supranational powers to the World Union. The EU should propose to institute a World Central Bank, with the power of controlling global liquidity and of prudential supervision. The World Union should have a system of own resources – necessary to save the bio-sphere from environmental deterioration and to assure prospects of development to the poorer countries. If the establishment of such a first world-wide common home will be accepted, and sufficient powers will be given to it to promote common policies of solidarity and development, then confidence will be restored in the production and finance markets. New and stable rules of behavior are indispensable for economic operators to resume to weave the fabric of international division of labor that the present crisis has brutally torn. In this perspective, the more sensitive and complex problem of military security could be

postponed to when the desire of peaceful cooperation will be consolidated, as happened in Europe after the initial stages of the integration process.

In the World Eco-monetary Union project, the currency question takes on a particular importance, because the financial crisis and the presence of a currency, the euro, alternative to the dollar as reserve currency oblige to seek a solution that cannot be limited to the mere working out of new rules for international finance. Who will decide on the new rules? And who will watch over their observance? Monetary and financial stability represent the hinge around which multipolar integration can develop. Failing to solve that problem in the globalization era would create the premise for an even worse crisis than the present one (e.g. a crisis due to lack of confidence in the dollar). It is necessary to replace the present asymmetrical monetary system with a symmetrical system, in which the currency can be considered as a global public good. The key currency of international exchanges, which is today a national currency, must be replaced with a currency controlled by supranational institutions (for a more in-depth analysis, see the *Appendix*).

Finally, the European Union must speak with only one voice in those negotiations. The European Union has already partly created the institutional structure that allows it to present itself united on some problems. On trade and ecology, it is the European Commission that acts as the European government in international conferences. After the creation of the European currency, it is just an obtuse reluctance by the national governments that prevents the Union from presenting itself united in the IMF or the World Bank. Should the Union have an autonomous budget, a Finance Minister and a "Prime Minister", it could speak in the negotiations for a new international economic order as equal to the other world governments.

6. The European Union's twin deficits

The hybrid nature of the European Union has spurred a lively debate among academics about how to classify an "unidentified political animal". The European Parliament defined the European Union as a "supranational democracy". That is more an aspiration than a reality. Actually, the European Union suffers a democratic deficit, as shown by the repeated attempts to reform it and the efforts by the Commission and the

Parliament to bring the citizens closer to the European institutions. The presence of a seeming European government (a governance) that is unable to take decisions except in the framework of existing supranational institutions, fuels confusion and disunion. The national prima-donnas turn up on the European stage only to collect rounds of applause. But it is the beams supporting that stage that shall be brought to light. The citizens must be in a position to judge who is making the decisions and sanction them with a negative vote if they make mistakes.

In turn, the democratic deficit turns into a governance deficit, because in the absence of an adequate budget, as we saw, the Union's policies are inefficient: their realization depends on the case-by-case consensus of the national governments. Germany's complaints – "we do not want to pay to solve other people's problems" – are understandable, but unreasonable. European public goods must be financed by European own resources. If the Union's budget is not sufficient, it is inevitable that a few national governments must, sooner or later, take upon themselves a European collective problem. If adequate resources are not granted to the European budget, the monetary union will run a serious risk of disintegrating. It is not a matter of imposing a further fiscal burden to the citizens, but to better distribute the fiscal resources between the national and the European levels. Only by applying the principles of fiscal federalism can this problem be tackled and solved. The Stability Pact is a bad substitute for a federal budget and a federal government.

The remedy to the twin deficits – of democracy and of governance – is simple: it is necessary to abolish the veto right in the Council of Ministers, which would thus become the second Chamber of the Union (the Chamber of the States) beside the European Parliament (the Chamber of the people of European nations). Once the principle of legislative co-decision is accepted, the European Commission will automatically become the only executive of the Union, also in foreign policy, if there is the will to do so. The deficits are two, but the remedy is one. More complex solutions, like a stable Presidency of the European Council, or a Directorate of the most important countries (as Sarkozy would like), represent palliative measures aimed to avoid to face the fundamental question: the abolition of the veto right.

Appendix

Global imbalances and the World Eco-monetary Union

The debate on the regulation of financial markets and of the economy is intertwined with that on the international monetary order because, since the Asian crisis of 1997-98, it became apparent that the crisis of the balance of payments is often accompanied by a crisis of the banking sector. The recent financial crisis, which originated in the United States, did not turn into a currency crisis because the dollar is the key currency in international payments. But if solutions applicable to all countries, including the emerging economies, are to be found, it is necessary to also consider the problem of monetary stability.

The seemingly simplest alternative is to go back to the control of international capital movements (e.g. by introducing a Tobin Tax), as was the case in the period just after the war. However, although the debate on the effects of international capital movements on economic growth did not lead to concordant results among economists (Eichengreen, Leblang, 2002; Obstfeld, 2008), one cannot but observe that the development of many Asian countries, in particular the Asian Tigers, China and India, was accompanied by an inflow of abundant capitals from abroad. Only in the context of a nationalist and Luddite policy would the idea to limit or stop international capital flow have any sense.

The free international circulation of capitals is still little understood in economic theory, that studies international trade with the theory of comparative advantages, without integrating it with that of monetary unification. It is possible, on the contrary, to demonstrate that in a commercial and monetary union, where labor and capital circulate freely, it is possible to attain labor productivity levels higher than in a situation of just free international trade (Montani: 87-94). The experience of the European integration is meaningful: after the common market, which allowed the free circulation of goods, a further progress has been made with the single market project in 1992 – later improved by the EMU – which consisted in the free circulation of people, capitals and services. Today, globalization may be interpreted as a stage in the integration of the world market, where, after the almost complete abolition of tariff barriers, the free circulation of all production factors is spreading.

The integration process of the European market has been brought to completion with its passage to the monetary union. An objective of the same importance must today be considered on a world scale. To show the necessity of it, let us consider the question of world imbalances caused by the use of the dollar as the international currency. Ben Bernanke (2005), the Governor of the Fed, argued about the existence of a global saving glut. After the Asian crisis of 1997-98, many emerging countries have chosen to peg their currency against the dollar, and, in order not to run further risks of sudden flights of capitals, have piled up big amounts of reserves, thanks to their surplus of current accounts. The United States, on the other hand, has made that behavior easier by providing international currency, given its deficit of current accounts. Exemplary has been China's behavior, who has accumulated in 2008 about 2.000 billion dollars in reserves, reinvesting a great part of them in US Treasury bonds. The savings of the emerging countries are therefore financing the expenditures of the US citizens and Treasury. Other surveys have confirmed this trend. Financial integration has considerably increased in the last years, in particular among industrialized countries; the biggest imbalances are found between the USA and the emerging countries (and Japan, who has a sizable trade surplus); the euro area is substantially in balance. The United States takes a double advantage from the use of the dollar as international currency: the creditor countries find it convenient to reinvest their reserves in US bonds, and the US citizens and enterprises can draw money at low interest rates, and invest abroad with a considerably bigger return (Lane et al.2006). The volumes we are talking about are huge. The amount of monetary reserves, that in the industrialized countries does not exceed 4% of GDP, in the emerging countries is as high as 20% of GDP (in some cases it exceeds 50%). It is an abnormal level, which can be explained by the fear of a sudden financial and monetary crisis, that also affects the domestic banking sectors (Obstfeld et al. 2007).

The flow of savings from the poor countries to the rich could be considered, with reason, as a sign of global imbalance. In other phases of the world economic history – as during the gold standard in the 19th century or the first years of the gold-exchange standard after WWII – have been the rich countries in the center to finance the periphery, thus favoring a converging process. However, there are economists (Dooley et al. 2003 and 2004) who theorize a revival of the Bretton Woods system of fixed exchange rates, due to

the presence of a mutual interest of both the central country and the peripheral countries to sustain their growth through an exchange of goods and investments. The peripheral countries point to an export-led growth strategy, which can be successful to the extent that the rich country in the center (the USA) is willing to keep its markets open; the central country imports low-cost goods from the periphery without arousing big social protests, because the low prices of imports reduce inflationary pressure, and because the multi-national companies in the center can reinvest capitals in the periphery, which in turn contribute to improve labour productivity of the guest country. The financial flows from the periphery, with high savings – collected by local authorities at low remuneration due to their control on capital movements –, are the reward for the US trading openness; in fact, the US is progressively replacing purchases from Europe with less-costly Asian products. This system is therefore bound to last, because it satisfies a mutual interest.

The idea of a new Bretton Woods, suggested by a tacit pact between central and peripheral countries, describes some important aspects of the present situation, but is not convincing. In the Bretton Woods years, there was one world currency only, the dollar, which could be used as reserve currency (in addition to gold). Now there is an alternative, the euro. One can then have doubts about how tenable the "new" Bretton Woods would be in case a process of replacing the dollar with the euro as reserve currency is set in motion (Kenen, 2005; Chinn, Frankel, 2008). It is necessary, therefore, to discuss further the basic problem of every international monetary system: who decides – and according to which criteria he distributes – the volume of world liquidity? To answer this question, it is appropriate to recall the criticism that Jacques Rueff and Robert Triffin addressed to the gold-exchange standard. After the first World War, Rueff recalls, despite the enormous increase of the monetary mass caused by war inflation, the governments wanted to go back to the gold system without devaluing enough their national currencies (in particular the sterling). As a remedy for the scarcity of gold, it was accepted that the national currencies could be used as reserve currencies beside gold (in that consists the gold-exchange standard). The consequence was that "the countries with a key currency, the USA and the UK, were given the peculiar privilege of being able to buy abroad without having to reduce their domestic demand: so, their balance of payments could stay indefinitely in deficit". On the other hand, in the group of countries with a convertible currency there was "a permanent inflation, generating economic expansion, but also rising prices". And as to the

Bretton Woods system in particular, Rueff (1963: 11-13) observes: "After 1945, we have reestablished the mechanism that has indisputably produced the disaster of the years 1929-1933". Basing himself on similar arguments, Robert Triffin forecasted, a decade in advance, the collapse of the Bretton Woods system of fixed exchange rates, because the US will be forced, in order not to let liquidity become short in the system of international exchanges, to issue increasing amounts of dollars in the presence of a stable, or decreasing, amount of gold reserves. Consequently, sooner or later the US pledge to keep stable the exchange rate at 35 dollars per gold ounce will become no longer credible. However, the end of the system of fixed exchange rates did not eliminate the fundamental flaw of a system of payments based on a national currency. Given the importance of the US economy and its political role, the dollar continued to be used as the key currency of international transactions. So, the United States has continued to enjoy its "peculiar privilege" of not having to worry about its external deficit. In one of his latest essays, Robert Triffin denounced the "international monetary scandal" of a system that was allowing the world's richest country to get loans from the poorest countries. In fact, the use of the dollar as reserve currency was encouraging its users to reinvest in the United States if only they could get a remuneration. But in this way "a self-feeding spiral of inflationary reserve increases" is created (Triffin, 1992: 14).

The above considerations on the inflationary character of the gold-exchange standard apply also with regard to the present revival of the Bretton Woods system, with the variant that inflation manifested itself more in the form of an excess of liquidity than of a rise in prices, because the imports into the industrialized countries of goods coming from low-labor-cost countries have kept in check the cost of living and the rise in wages. Moreover, due to the fact that the US enjoyed the advantage of sizable flows of foreign capitals in public and private securities, it could keep interest rates low. In that context, the exuberant US financial market has created those toxic assets that originated the present crisis. It has to be observed, in conclusion, that the high level of reserves in the developing countries represents an inefficient way of investing world resources, because, as Stiglitz (2006: ch. 9) notes, those countries could rather use those dollars, coming from an export surplus, for domestic investments in public goods: that represents a further cost of an international monetary system based on a national currency.

We can now conclude by listing the fundamental requisites that should characterize a World Eco-monetary Union, whose initial core of countries could be formed by the United States, the European Union and other industrialized countries, and possibly by a number of developing countries too. Considering the experience of the European monetary union, those requisites should be at least three: a) a return to fixed exchange rates among the various monetary areas; b) a supranational governance of international liquidity; c) a common budget. Let us now briefly comment on these three requisites.

A fixed exchange rates system is a need particularly felt by both the developing countries, which are willing to pay a high price in terms of a high volume of their reserves, if only they could attract foreign direct investments and assure new markets to their products, and the industrialized countries, willing to stabilize their commercial and financial relations. However, a return to fixed exchange rates is considered impossible due to the so-called "inconsistent triad": there cannot exist at the same time independent national monetary policies, stable exchange rates and free movements of capital. To overcome this objection, it has to be observed that in a unified (with fixed exchange rates) monetary area, capital flows can spontaneously take a "stabilizing" direction more favorable to the development of the areas with low labor-costs. Among the countries that created the monetary union in Europe, there are of course imbalances between their respective balances of payments, although overall the monetary union is practically in balance in its relations with the rest of the world. But those internal imbalances, even significant, do not generate such tensions as to produce monetary crises and capital flights, as happens in the international arena when a "foreign" currency is used as reserve currency. The European countries have freed themselves from the constraint of the balance of payments, which does not appear any longer among their economic policy objectives, even if other constraints, like those fixed by the Stability Pact, must be observed. A very interesting study (Aherne et al, 2008) on the imbalances between the countries of the European monetary union highlighted that as a tendency the countries with a high per-capita GDP also have trade surpluses but, on the other hand, the flow of capitals heads for the countries with a per-capita GDP lower than the average. A converging process is thus created which appears to be very problematic in an international system based on a national currency which is also reserve currency. Moreover, belonging in a monetary union – in particular when it is of world dimensions – shelters the member countries from

external turbulence. The recent financial crisis showed that the European countries still outside the euro area, like Hungary, were subject to serious pressures due to capital flight (flight to quality), and they were able to counter them only with the aid from the ECB and the IMF (Darvas et al. 2008). The symptoms of this crisis are not very different from those that hit the Asian countries in 1997.

The second problem, that of the responsibility of last resort for the creation of international liquidity, is crucial. The European experience showed that until national governments were able to decide their domestic inflation rate according to their needs of economic policy, also their exchange rates did not remain stable. On the other hand, fixed exchange rates are one of the conditions of economic development. The possibility for economic agents to fix contract prices in a stable currency represents an indisputable advantage of domestic trade as opposed to international trade. International transactions are penalized in comparison with the domestic ones because the risk deriving from a change of value of the currency in which the contract is signed is not eliminable. If the conditions are to be created for letting international trade and finance develop as much as they do at home, it is necessary to solve at the root the problem of the responsibility of last resort deciding on the volume of international liquidity. Since the end of WWII, has been the USA to perform that function. But the USA has shown that it carries out its responsibility with an eye to national interests more than to the stability of the international economy. The creation of the euro does not change much this problem. In the first half of the 20th century, the dollar replaced the sterling as key currency. But in the century of globalization it would be irresponsible to point at a competition between the dollar and the euro for world supremacy. In the long term, the establishment of a multipolar world with conflicting big political actors, like China, India, Russia, etc., in addition to the USA and the EU, would make a scenario of fragmentation and disruption of the economic order probable. For globalization to develop, it is necessary to build a symmetrical international monetary system. The USA, sooner or later, shall become aware of the new reality. A stable currency is a public good that must be guaranteed to all of the countries that are using it. It is necessary then to entrust to a supranational authority – a central bank – the task of providing liquidity to the world economy, according to criteria and objectives agreed between the member countries of the Eco-monetary union: for example, the average

inflation rate should not exceed a certain value. The central bank could provide liquidity to national central banks using a basket of currencies, like the Special Drawing Rights (SDR), which will be also used for bank transactions, but not necessarily shall it become a circulating paper-money. The dollar could then be gradually replaced as international reserve currency[VI]. National currencies can remain, as happened during the transition to the European currency, when fixed parities were established among currencies, the ECB was created with the power to determine the quantity of the new currency, but the replacement of national banknotes with the euro was postponed to a later date. The question, that is not to be dealt with immediately, is whether a Stability Pact, imposing constraints on the national budgets, will be necessary also for the countries of the World Eco-monetary Union. Such a decision would certainly meet at this moment strong political resistances. Therefore, the question that must be further studied is whether it is possible that the World Central Bank can guarantee monetary stability (that is to say, an average inflation level) and the stability of exchanges without constraints on public expenditure. In Europe it was decided that the two sources of inflation – the power to issue paper money and public debt – must both be regulated at the European level. However, it could be decided to let the international financial markets be the watchdog against excessive national deficits, because financial integration has by now reached such a level that quite unlikely could a government find money at the world interest rate, with no additional spread for risk, if it does not give serious warrants on its financial situation. Indeed, States have margins for maneuver not dissimilar from those of enterprises, and like enterprises they can default if they do not follow prudential financial rules.

However, without a Stability Pact for the World Eco-monetary Union, it is necessary that the cohesion among the member countries be assured by efficient common policies. The last problem concerns then the necessity to institute a public budget, financed with autonomous resources, that can allow the member countries to put in place the policies that the market cannot realize. The budget is the instrument for the world-level regulation of sustainable development. If there were no possibility to realize common world policies, the individual governments would be forced to put in place substitutive policies, less efficient and non-coherent. Basing itself on its own resources, the World Union could instead realize policies fostering the development of poor countries and their integration into the world economy. The Union could also face the problem of an ecological reform of

the economy. Finally, it could make access easier for those countries that cannot immediately join the Union, but are willing to do so later. It is not possible here to quantify the budgetary needs of the World Eco-monetary Union for such aims, but suffice it to recall that in the European Union a budget amounting to about 1% of GDP has been sufficient so far to finance the economic and social cohesion policies and the environmental policies. The European Union, if it wants to realize more ambitious policies, cannot content itself any longer with such a small budget. However, for the World Union, a budget of 1% of the world GDP would represent a significant step forward with regard to the present situation, where the UN has no own resources to draw from for the policies it is proposing, which, exactly for that reason, remain almost completely not accomplished.

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* I thank E. Cotta Ramusino, R. Fiorentini, A. Iozzo, F. Masini, D. Moro and F. Praussello for having read and provided comments to a first version of this article.

I About the European integration as evolution from an original federal core see Montani, (2008).

II For an incisive criticism of the "efficient markets" paradigm, see De Grauwe, 2008.

III One could also propose a direct role of the ECB in the supervising function, although the ideas on the matter are mostly in favor of a separation between the peculiar functions of central banks and those of supervision. See Masciandaro, Quintyn, Taylor, 2008.

IV It does not seem appropriate to institute a budgetary chapter reserved to specific interventions to support the banking system. A chapter for interventions to support disasters, epidemics and catastrophes seems more appropriate, in order to avoid that the creation of a specific rescuing net becomes the unintentional cause of the instability of the banking system, as argued by Calomiris, 2007.

V See, on this matter, Montani, (2008: 186-191).

VI A gradual replacement of the dollar with the SDRs issued by the IMF is suggested also by Kenen (2007).

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What colour for the helmet?

Major regional powers and their preferences for UN, regional or ad hoc coalition peace operations

by Chiara Ruffa

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Abstract

After the end of the Cold War, peacekeeping operations have increasingly been launched by new actors (such as regional organizations and ad hoc coalitions) despite the continued and important role of the United Nations. What do major regional powers prefer? Do they opt for the UN, for 'coalitions of the willing', or for regional organizations when establishing peacekeeping missions? And do they tend to prefer one of the three?

In this paper, I argue that major regional powers tend to deploy their troops with regional organizations or 'coalitions of the willing' when launching peacekeeping operations; I also try to develop possible explanations for this phenomenon.

This research can make a contribution in an almost unexplored field of the literature and it can also tell us more about how core principles of peacekeeping are being modified by the emerging role of new actors.

Key-words

Peacekeeping operations, regional organizations, United Nations

1. Introduction*

Peacekeeping missions have become more complex and more diverse, and the United Nations is no longer the only agent launching peacekeeping operations: regional organizations and ad hoc coalitions have also become lead actors in peacekeeping missions.

In this article, I address the following questions: do states prefer to deploy troops under the auspices of the UN or in other types of mission? How can such preferences be explained? Do any of the trends found help to show that peacekeeping is changing its normative principles?

This work is located in the "international security" sub-field of international relations, and combines quantitative studies focusing on peacekeeping operations with classical work on regionalism and the international law debate.

I seek to make two contributions. First, I offer a conceptualization of the way in which a state's decision to participate in a peacekeeping operation can be assessed, drawing attention to unexplored dimensions. Second, I test major regional powers' preferences for regional peacekeeping through a quantitative analysis, trying to explain their behaviour by looking at three levels of analysis: systemic, regional, and domestic.

At the theoretical level, this work can shed light on the various agents who take part in peacekeeping missions, helping to disentangle the 'black-box' vision of these types of intervention. On the practical level, this work would clear a path towards a check-list of policy recommendations on patterns of contemporary peacekeeping.

I proceed in three steps. First, I conceptualize the notion of peacekeeping operations and develop a model to assess a state's contribution to peacekeeping. Second, I demonstrate the findings of the quantitative analysis, combining it with certain qualitative remarks, and try to explain the trends shown, distinguishing between systemic, regional, and domestic explanations. Third, I draw some final conclusions.

2. What is peacekeeping, and how can states' contributions be measured?

In order to explore states' preferences in peacekeeping operations, the concept of peacekeeping must be clarified and delimited, and states' contributions to peacekeeping must be measured. This section proceeds in two parts. The first part develops a taxonomy of peace operations; the second part elaborates on how states' contributions to peacekeeping may be measured and specifies the cases and time-span involved.

2.1 What is peacekeeping? A working definition

Peace operations are considered by the mainstream literature as military interventions by third states or a group of states meant to keep, build, and maintain peace, with the consent of the host state after the signature of a ceasefire agreement[I]. In a more precise sense, peace operations refer to "military and civilian activities led by state, but also non-state[II] actors in a host state or two (in the case of an inter-state conflict)" (Tardy 2004: 3) . Thus, their aim may be to prevent a conflict, to supervise a ceasefire area and stop a deadly conflict, to rebuild a judicial system, or to accompany post-conflict reconstruction and humanitarian assistance. Their legitimacy may stem from legal consent or coercion (in theory with UNSC authorization) or both (e.g., dubious consent and ex-post authorization). The actors may be a coalition of actors, a single state, or a regional organization.

Here, I refer to peace operations in a broad sense. I use the term "peacemaking" for prevention of conflict, "peacekeeping" for a conflict which is not yet concluded (but after the signature of a cease-fire agreement), and "peace-building" for the aftermath of a conflict. Even if the vision of phases of conflict is too simplistic, these terms are the clearest way of focusing on the type of intervention I am interested in.[III]

Conflict Phases		*Operation*	*Actors*	*Use of force*	*Goals*	*Conditions of legitimacy*
Pre-conflict		Peacemaking	States, Coalitions of the willing, Regional organizations, United Nations	Self-defence	Conflict prevention	UNSC resolution and/or consent of the host state
Conflict	Before cease-fire	Humanitarian Intervention	States, Coalitions of the willing	Limited/ Proportionate	Action taken against the State to stop gross violations of human rights perpetrated inside the State	UNSC resolution and/or consent of the host state
	After cease-fire	**Peacekeeping Operation**	**States, Coalitions of the willing, Regional organizations, United Nations**	**Limited/ Proportionate use of force**	**Ceasefire supervision and/or enforcement**	**UNSC resolution and/or consent of the host state**
Post-conflict		**Peace building**	**States, Coalitions of the willing, Regional organizations, United Nations**	**Self-defense**	**Reconstruction**	**UNSC resolution and/or consent of the host state**

Table 1: A taxonomy of peace operations and the focus of this research (in bold characters)

Since the resources allocated to peacemaking activities are minor compared to the resources allocated to peacekeeping and peace-building missions, I exclude such activities.[IV] Whilst fully acknowledging the huge differences between peacekeeping and peace-building, in this paper I consider them together.[V] For ease of exposition, I shall use the term "peacekeeping operation" to include peace-building activities, bearing in mind the conceptual differences present. Since the core principles are so different, I exclude humanitarian interventions from the analysis. Based on the distinction between different conflict phases, Table 1 summarizes the different kinds of peace operations, with the operations I consider here put in bold type.

In this article I include only military interventions for peace and humanitarian purposes that have secured permission, ignoring the debate on whether and how such interventions are permissible. That is, I include in the analysis all peacekeeping

operations deployed under the consent of the host state and approved by a UNSC resolution, or, in the case of silence of the UN, by a very broad acceptance by the international community. I take into account peacekeeping operations and humanitarian interventions deployed from 1956 to the present day.[VI]

2.2 A multidimensional model for evaluating states' contributions

In order to explore regional powers' preferences for certain types of peacekeeping missions instead of others, it is important, initially, to focus on how these preferences can actually be assessed.

The literature on peacekeeping operations is almost silent on this point. First of all, I define 'preference' by building upon the classical definition in political science: a preference is the best choice given the circumstances.[VII] A preference is consistent and consequential; it does not deal with the motives and may also mirror a genuine normative orientation. In this work, I do not focus on the motives for deploying, but more on what each state actually prefers in a set of three preferences: UN, regional, or ad hoc peacekeeping.

One strand of the literature on peacekeeping has, from the end of the 1990s onwards, focused on the agents launching peacekeeping operations, such as the UN, regional organizations, and security alliances (Albala-Bertrand, 2000, 21).[VIII] Interestingly, however, only a few scholars have paid attention to the actors that are the crucial building blocks of these agents, and actually make deployment possible: the nation states. Notwithstanding the very important role played by international civilian bureaucracies, development or emergency agencies and, more recently, by private military companies (the legitimacy of whose participation in such operations is extremely doubtful), nation states remain the core providers of resources and troops.[IX]

In existing documentation on each country's contribution to peacekeeping, the most commonly used parameter is the number of troops deployed in the field. Both Bellamy and Williams and Daniel and Caraher look at this particular aspect.[X] Bellamy and

Williams focus on the qualitative assessment of advantages and disadvantages of regional peacekeeping; Daniel and Caraher investigate the characteristics of the countries which have participated in peace operations between 2001 and 2004. As a matter of fact, assessing each country's contribution to peacekeeping operations in terms of the number of troops is the most intuitive, tangible, and immediate way of assessing the will of a state to contribute to a peace operation. Yet, it is not entirely convincing.[XI]

Since the existing literature has proved partly inadequate (see footnote 12), I suggest a different model to assess the contribution of nation states to peacekeeping operations. Due to time and space constraints, I use a partial version of this model in this paper. The modest goal is to complement troop counts with other parameters of analysis. It would be appropriate and accurate to use qualitative parameters extensively and not just as complementary remarks, but this will be the task of future research.

The principal parameter therefore remains the contribution of uniformed personnel, assessed through quantitative methods. But other dimensions have emerged from the critique of the literature: funding, technology and training organized by one particular country for the armies of other countries or groups of states. While one may think of many other indicators that could suit the present purposes just as well, I contend that the indicators in question are already sufficiently representative. I argue that these are good proxies, can easily be assessed empirically and are worth being taken into consideration.

Having identified these criteria, I turn now to the States I would like to focus on, the time span of their contributions and the available sources.

2.3 Case selection and time span

Since my claim is that major regional powers prefer non-UN-type of peacekeeping, it is reasonable to choose cases that are described as regional powers.

By regional power I mean a state that plays a clear and uncontested influence in its neighbourhood. In this sense, I build upon the classical understanding of regional hegemony.[XII] The countries selected may play a role not only in the security sphere but

in the economic one as well. Of course, the role of a regional power can change over time, but for the purposes of the present research this should not be a major problem.
For this reason, I focus on the following States: the United States, for North America; Brazil, for South America; Russia, for Central Asia; China, for East Asia; India, for South Asia; Italy, the UK, Germany and France for Western Europe; Nigeria, for Western Africa; South Africa, for Southern Africa; and Australia, for Oceania. One could wonder why other countries, such as Mexico for Central America or Kenya for Eastern Africa or Japan for East Asia, are not included. The main reason for this is time constraints; but these countries could probably be included during further research. As unanimously recognized by international law, I consider the data about the Soviet Union and Russia in continuity.[XIII]

The period under consideration lies between the end of the Cold War and 2007. I assume as the starting point of the post-Cold War era the year 1990, and include all available data for 2007.[XIV]

Concerning the quantitative part of the analysis, I have collected data on each state's contribution of uniformed personnel between 1990 and 2007. I have then distinguished among different missions launched by the United Nations, regional organization and ad hoc coalition missions. Sometimes the missions are launched under the umbrella of a regional organization but are in fact an ad hoc coalition of the willing or a unilateral mission. Since this is not always clear, I have relied upon the label under which the mission is launched.[XV]

3. The colour of the helmet: findings and explanations

After having developed a model of measurement and having selected the cases, we can now display what the major trends in regional powers' peacekeeping are. First, I show the five findings that emerge from these data. Second, I formulate possible explanations of these results, which show potentially important implications for the future of peacekeeping.

3.1 Findings

The main tendencies and broad findings of the research are described below, with states grouped together by common characteristics. For each group of states, I describe the tendency and double-check with data not strictly related to troop contribution.

1. India, China and Brazil are the only regional powers which always choose the 'blue helmets' (the United Nations peacekeeping missions)
2. None of the major regional powers seems to have completely dismissed the United Nations peacekeeping operations
3. Africa and Western Europe seem to be the areas where peacekeeping missions of regional organizations are formed, even if there is also some experience with ad hoc coalitions
4. The United States, Russia and Australia seem to prefer ad hoc coalitions for peacekeeping
5. Among all the missions a general trend seems to emerge: more and more troops are being deployed in peacekeeping missions, with two recurring peaks: after 1994-1995 and after 2001.

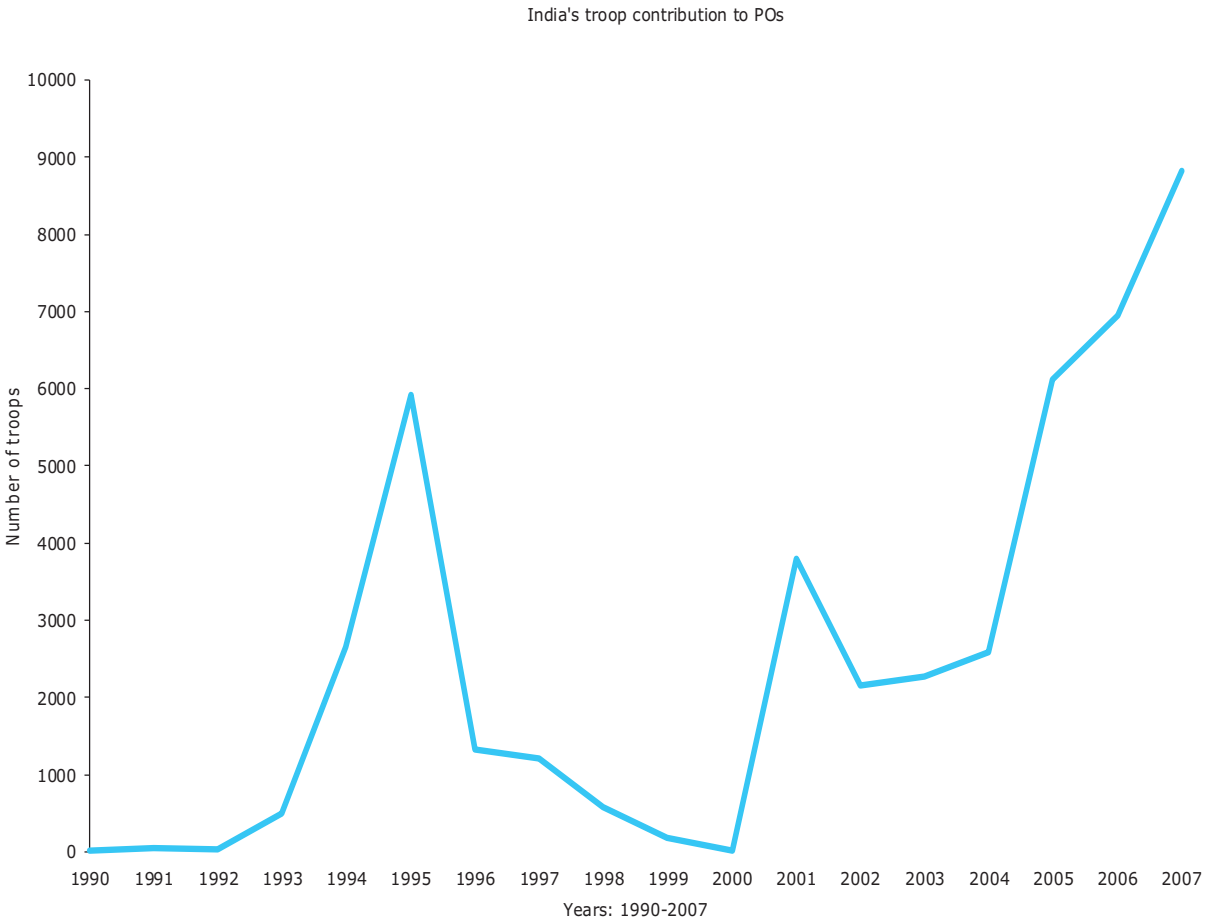
Here I show the results, grouping the countries by their preferences. First, I show the countries choosing UN peacekeeping; second, countries opting for ad hoc coalitions; then, countries deploying preferably within the framework of regional agreements.

Choosing (almost) always the UN: China, India and Brazil

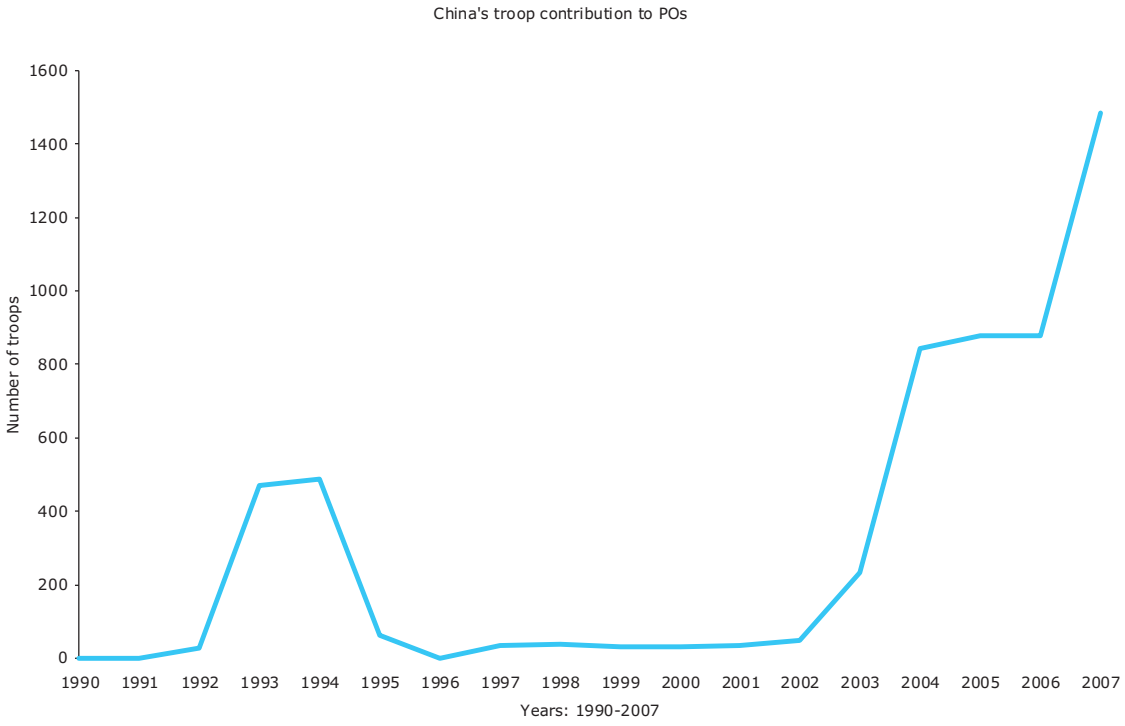
I first focus on the three countries that tend to prefer deploying uniformed personnel within United Nations peacekeeping operations. Among the cases selected, India, Brazil and China are the only regional powers that have never deployed out of a UN framework.

India has deployed its first peacekeepers in 1990 in the UNTAG.[XVI] After that, an increasing number of peacekeepers have been deployed: from 21 military observers deployed in 1990 to 8821 troops in 2007. More precisely, three peaks in the contribution of uniformed personnel can be singled out: 1994, with India strongly present in Somalia; 2001, with India deployed in the United Nations Mission in Sierra Leone (UNAMSIL) and in the United Nations Mission in Ethiopia and Eritrea (UNMEE); and 2007, with India's increasing involvement in Lebanon and Sudan. At present, in the ranking of troop contributors to UN peace operations, India is the third largest contributor, after Bangladesh and Pakistan.

Yet, looking only at the number of uniformed personnel deployed does not give a precise understanding of India's role in UN peacekeeping. India plays an important role not only in terms of number of troops but also for its military leadership in UN peacekeeping operations. For instance, since the mission in Sudan has been launched in 2005, the Indian army has been leading the military part of the mission, with Lieutenant General Singh Lidder as Force Commander. Nevertheless, India is not among the top ten financial contributors to the United Nations Department of Peacekeeping Operations (DPKO). Still, we can consider its role in the contribution of military personnel as increasingly relevant and with an absolutely clear relevance for UN peacekeeping.

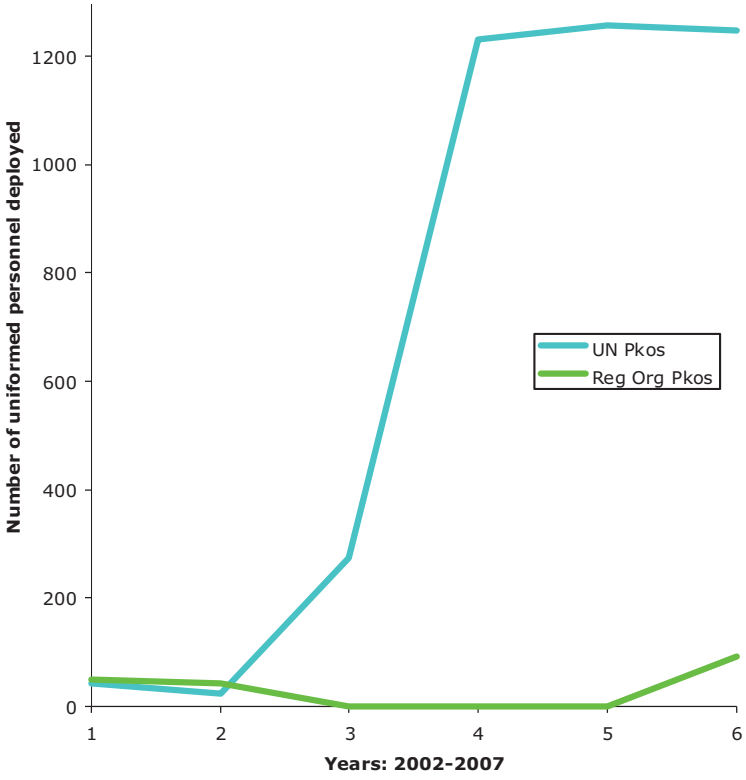


The Chinese case is also an interesting one to analyze. Two years after the end of the Cold War, the first Chinese peacekeepers were deployed as observers in the United Nations Mission in Iraq and Kuwait (UNIKOM) and in the truce supervision mission in the Suez Channel and Sinai. Since then, China has deployed an increasing number of peacekeepers in numerous contexts, preferring in general traditional peacekeeping operations of truce supervision or monitoring cease-fire agreements between two clearly distinguished parties.



Similarly to the case of India, two peaks can be identified on the constantly increasing line of Chinese uniformed personnel deployed. Both peaks are similar to the Indian case: around 1994, with the Somali crisis, China sent many more troops than before (and it sent troops instead of only military observers and logistics); a second noticeable increase comes in 2004, with a stronger involvement in the United Nations Mission in Sudan and in the UN Mission in Liberia.

Whilst Brazil has also provided troops in the framework of regional organizations, such as in Haiti or in the monitoring mission at the border between Ecuador and Peru, nevertheless Brazil's involvement with the United Nations remains largely dominant, particularly with troops deployed with MINUSTAH in Haiti.

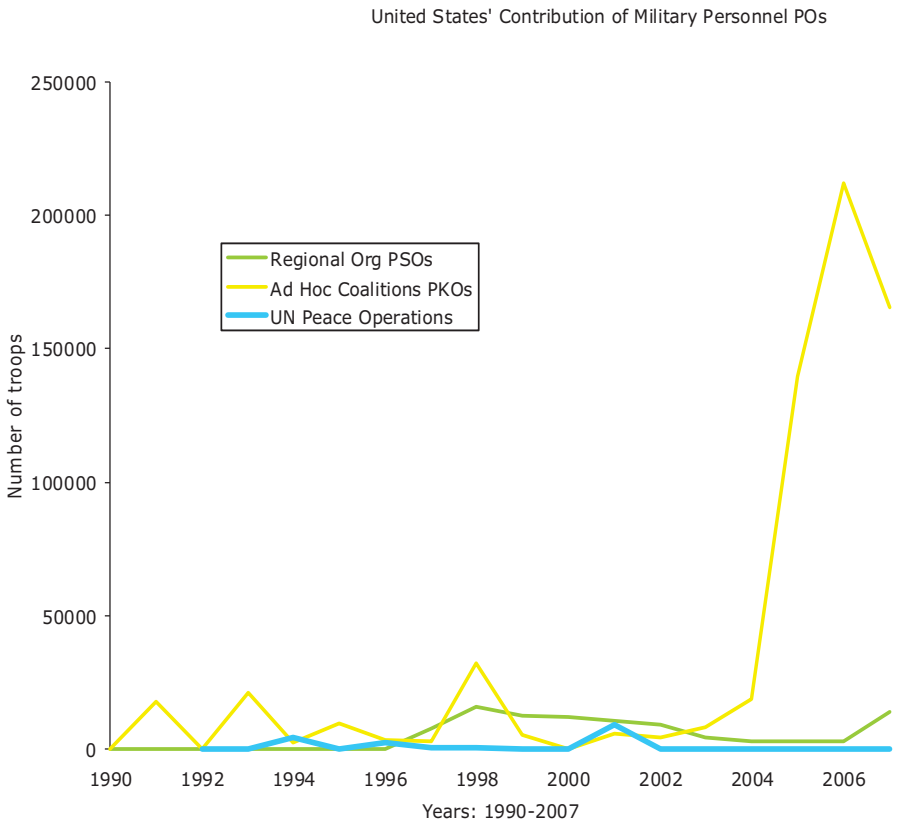


Summarizing, among the regional powers India's and China's troop contributions to the UN are the most sizeable. Brazil is the only regional power that clearly still prefers to deploy in UN peacekeeping missions.

Choosing ad hoc coalitions: the US, Russia and Australia

I now move to the group of States who clearly opt for ad hoc coalitions. Since the end of the Cold War, the United States has taken part in an increasing number of peacekeeping operations. But, from the 1990s onwards (but in particular after 2001) its preference has been to deploy uniformed personnel within a non-UN framework, in particular to lead ad hoc coalitions. Since the crisis in Somalia, the US has shown a preference for ad hoc interventions. Even in the framework of the United Nations Mission in Somalia, the United States deployed a special US joint operation, UNITAF, outside of the UN, to coordinate the multinational effort in Somalia. After the US withdrawal from Somalia and the tragic Black Hawk Down accident, the US has tended to intervene less with the UN and more within other frameworks. During the Yugoslav

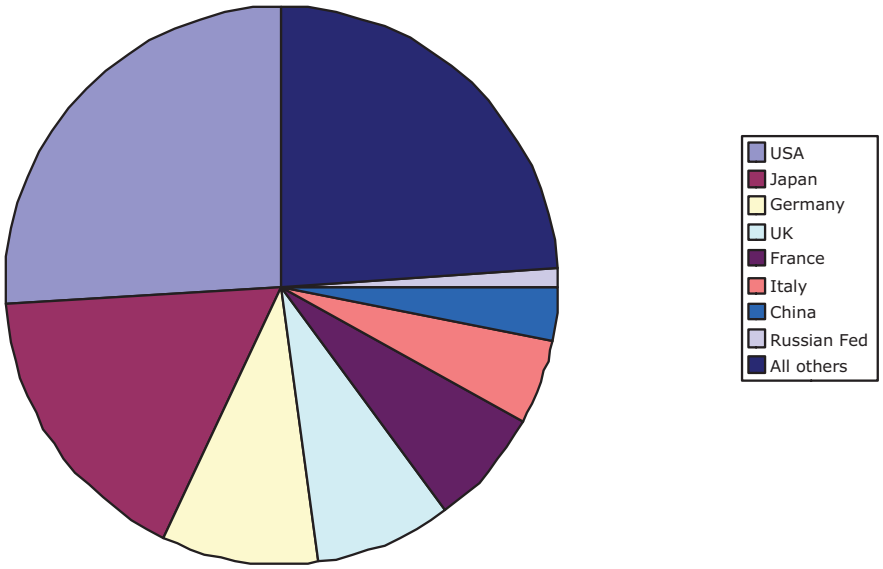
war, the US involvement in UN peacekeeping missions did not disappear but was accompanied by a US presence in NATO peacekeeping operations, such as SFOR or IFOR. This tendency has been strengthened after 9/11. As the table shows, after 2001 a strong increase of ad hoc coalitions can be seen, together with a decrease of UN and regional peacekeeping operations.



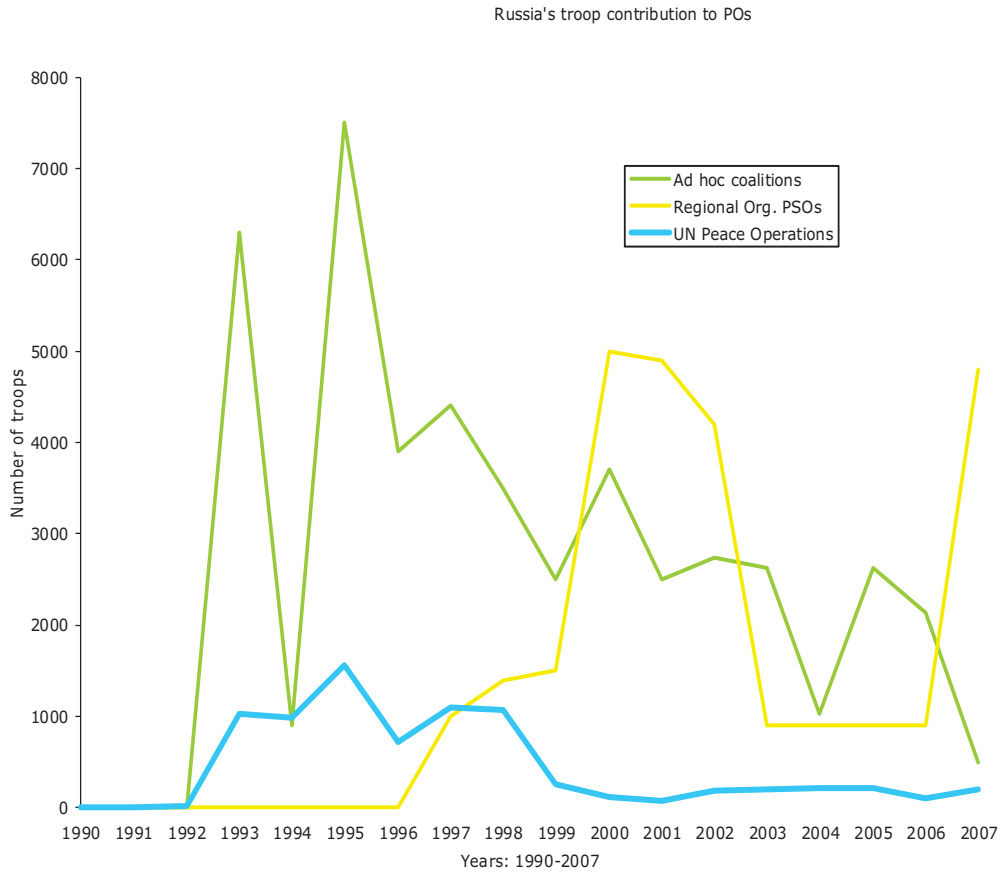
How can this development be explained? One could argue that this tendency has its explanation at the systemic level, and in the role that the US wants to play in the international arena, deploying outside of Security Council control and deploying quickly when needed. After 9/11, new domestic elements seem to have emerged, such as the strengthening of the neo-conservative wing within the Republican party, legitimizing a more interventionist approach in the context of the war on terrorism, among other aspects. This explanation could account also for the recent preference by the US to deploy in 'coalitions of the willing' instead of within regional organizations. Acting within an ad hoc coalition, the US can deploy more quickly and overcome the need to get the consent of member states, required both within the UN and within regional

organizations. Yet, this explanation cannot account for other dimensions. For example, since the beginning of the 1990s, the US has constantly been the biggest financial contributor to the United Nations (graph 4 shows 2007 data concerning funding).

Providers of assessed contribution to UN Peacekeeping Budget



Building upon this data, the explanation of a constant disengagement of the US from the United Nations is not satisfactory. Therefore, I argue that the US preference for regional or ad hoc coalitions for peacekeeping can be explained as its need for rapid intervention (for humanitarian reasons or strategic priorities), outside of the basic peacekeeping framework. This can lead to a more efficient intervention, but at the same time it could of course lead to a generalized misunderstanding of the founding principles of peacekeeping, such as that to seek the consent of the state where the intervention takes place.

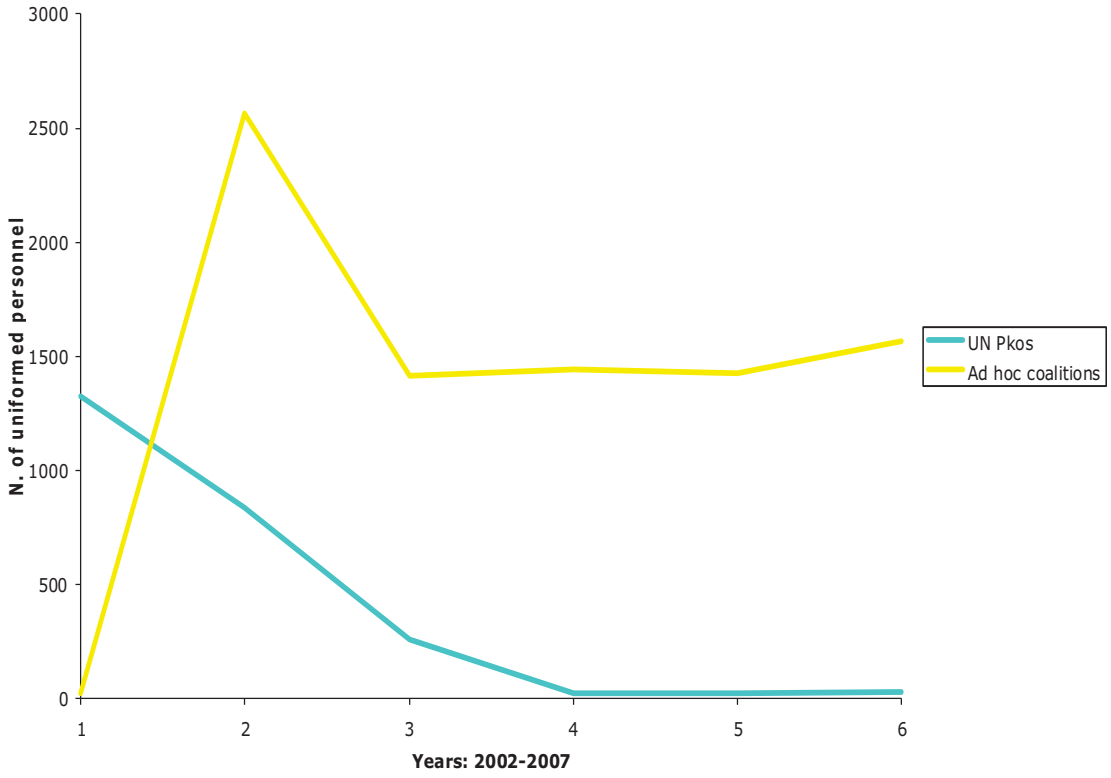


Russia deployed its first peacekeepers two years after the collapse of the Soviet Union, in the United Nations mission of truce supervision in Kuwait and Iraq. In 1993, Russian peacekeepers intervened within the framework of the Community of Independent States (CSI) and conducted regional peacekeeping operations in the neighbourhood region of Georgia and Abkhazia. Some literature considers these two operations as having a unilateral character, given the fact that Russia has largely deployed with minimal contributions by other States. Looking at Graph 5, the development of a trade off between ad hoc coalition peacekeeping operations and an emerging preference for regional peacekeeping seems clear. United Nations peacekeeping has been in constant decrease after 1998 but now seems to have levelled off.

International factors seem to be intermittently relevant in accounting for Russia's preferences in peacekeeping. The humanitarian crisis in Somalia did not produce major changes in Russia's choices, but 9/11 has had a greater impact. Regional level instability,

on the contrary, seems pivotal to explain Russia's choices of intervention. It seems reasonable to address the question of why Russia tends to intervene through coalitions of the willing or regional organizations. This may be linked to a Russian interest in managing alone the crises in the former Soviet Republics area. As is the case of the United States, one may ask how this tendency is affecting the core principles of peacekeeping.

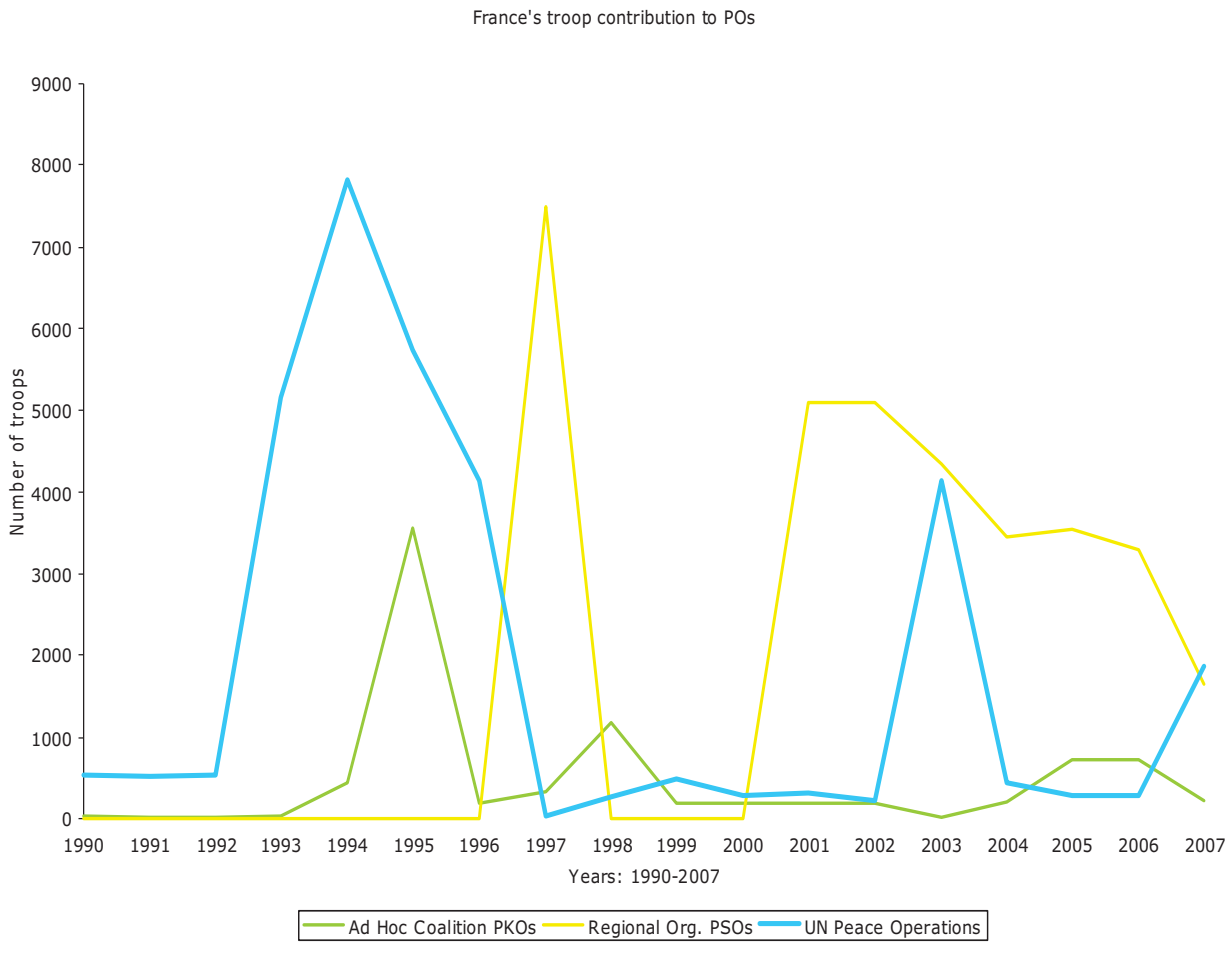
Australia clearly shows an increasing preference for deploying in ad hoc coalition peacekeeping, particularly within neighbouring areas. The most important deployment is the intervention in 2003 in the Solomon Islands, in which Australia led a multinational force comprising 1,500 Australian peacekeepers, 300 soldiers from New Zealand and the Pacific Islands (Fiji, Papua New Guinea, Samoa, Tonga and Vanuatu) and 400 police officers. This intervention can be seen in the peak of the ad hoc coalition line in the graph.

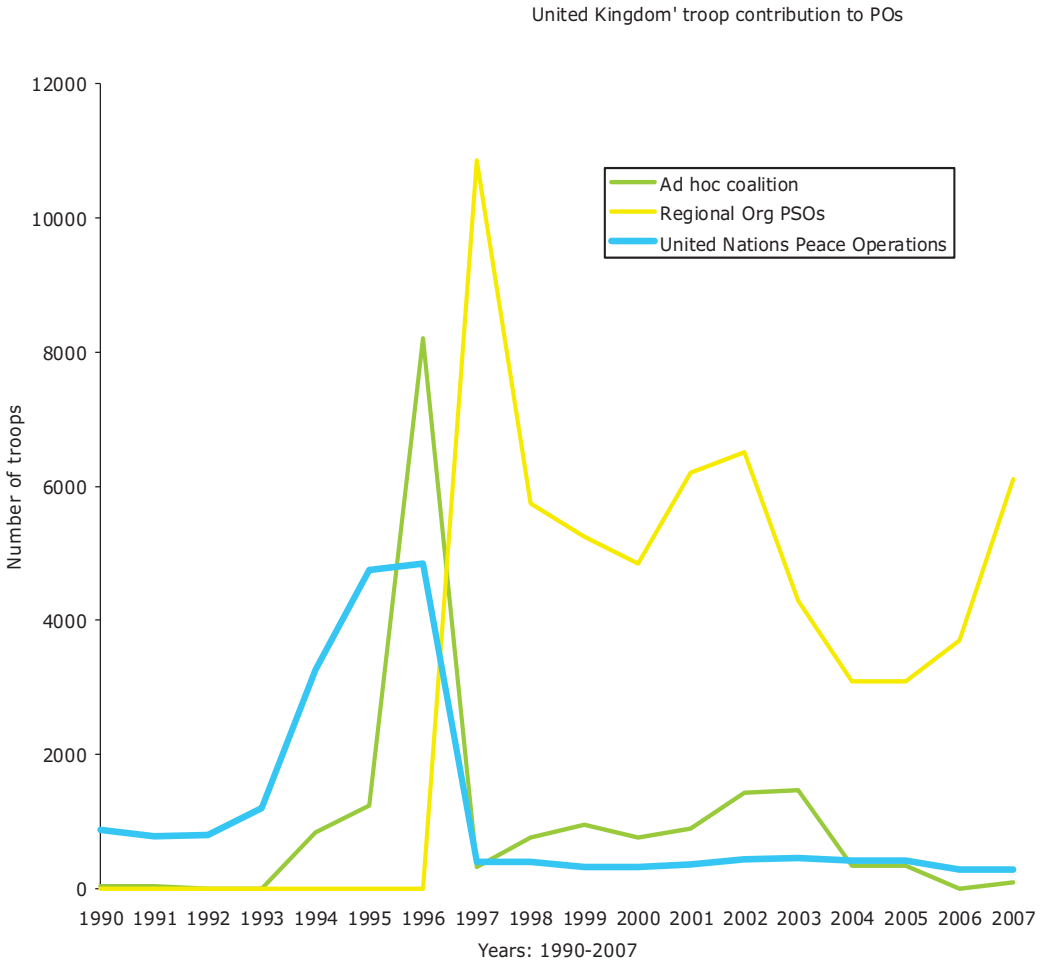


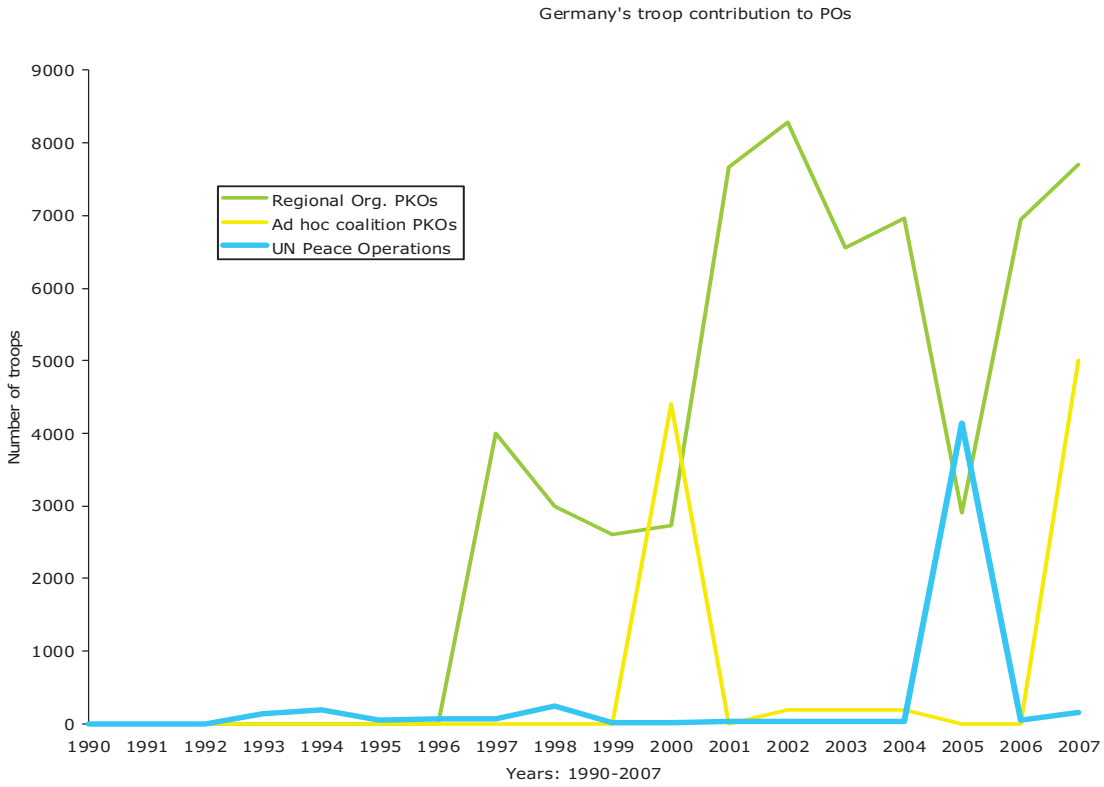
This tendency can be explained with particular reference to regional level interests. Neither major international events (such as 9/11) nor domestic political turn-overs are able to account for Australia's preference for ad hoc coalition peacekeeping missions.

Going "regional": Germany, Italy, France, United Kingdom, Nigeria and South Africa

In this paragraph, I demonstrate the findings related to countries that tend to choose regional organizations peacekeeping missions. Despite persisting differences, Germany, France and Italy seem to follow similar patterns, as shown in the following graph.





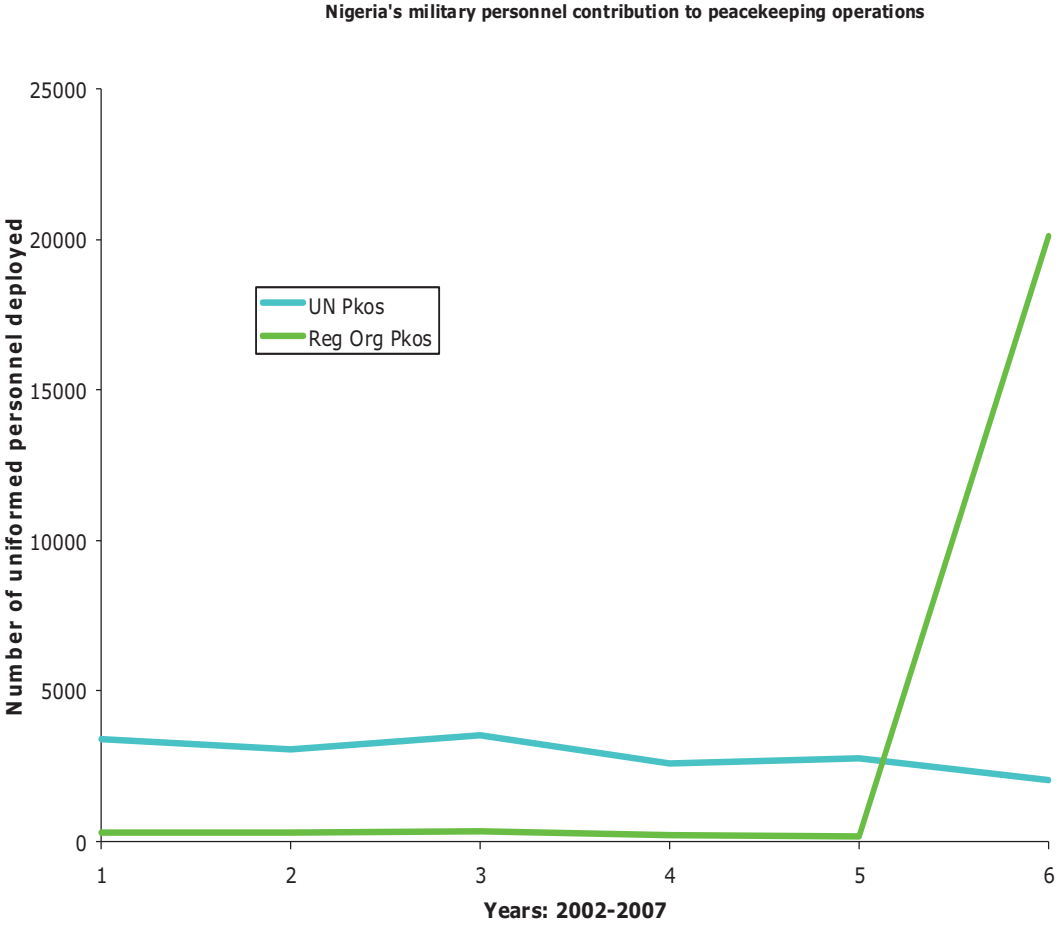


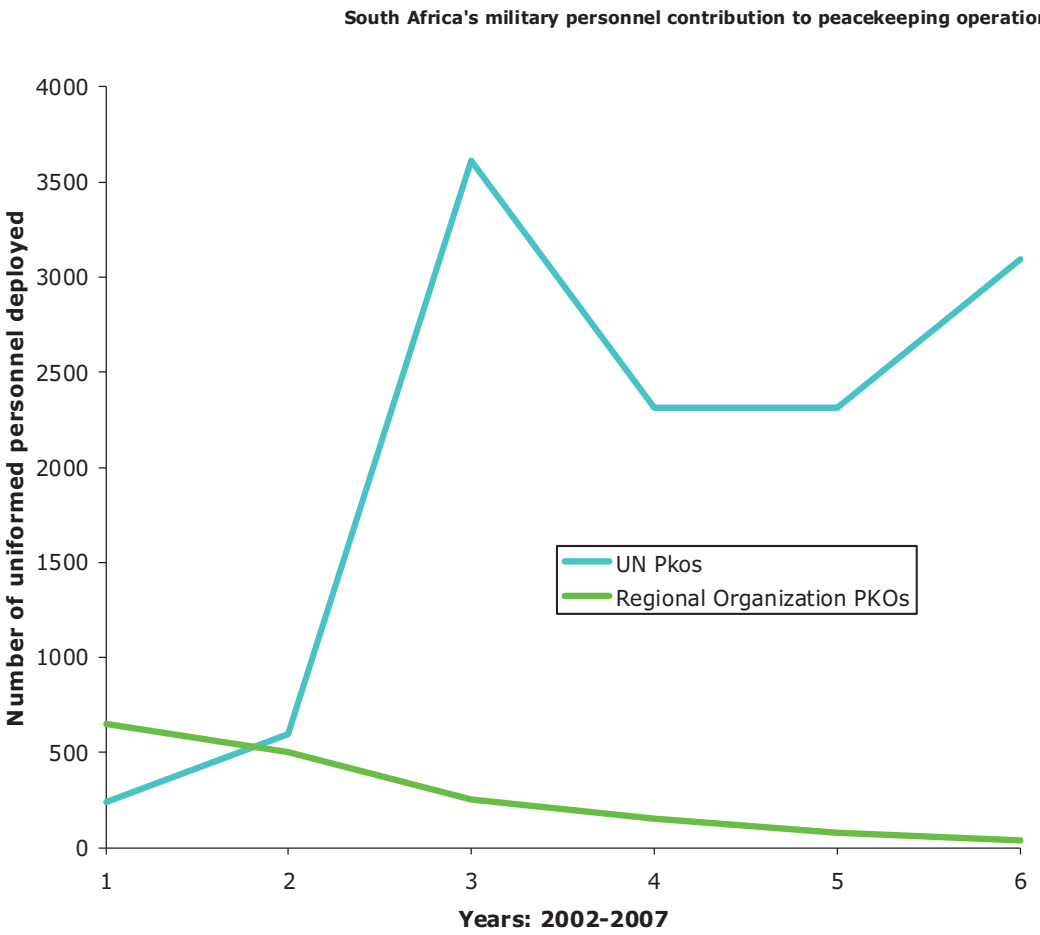
Three of the four European countries considered, France, the UK and Italy, show a first peak in the deployment of troops between 1993 and 1995. This peak mainly involved UN missions. The peak for all peacekeeping operations was in the mid-nineties, after which both UN peacekeeping and 'coalition of the willing' peacekeeping dropped off. Conversely, regional peacekeeping contributions have continued to remain at very high levels of troop deployment, with a slight increase in 2007. This development is linked to the deployment of an increasing number of regional peacekeepers with NATO interventions in the former Yugoslavia, following which a new regional organization (the European Union) arrives on the scene: in 2003, in Macedonia and then in the Democratic Republic of Congo, the first EU peacekeeping missions were deployed.

Germany's trend is different because, until 1995, Germany deployed only logistic and medical military personnel. After this date, Germany has followed roughly the same trend of the other countries.

Broadly, these four countries seem to choose regional organization missions following the progress of their regional integration. Despite some exceptions, as a whole, regional level explanations seem to prevail.

Nigeria and South Africa show two different trends. On the one hand, Nigeria has, since 2005, deployed an increasing number of peacekeepers within the African Union and ECOWAS frameworks. Since the ECOMOG intervention in Liberia in 1990, Nigeria is the most active among West African states. At the same time, South African troops are increasingly deployed with the UN. Even if it cannot be seen in the graph, South Africa has, throughout the '90s, deployed regional peacekeepers both under the Southern African Development Community (previously SADCC) and under the Organization for the African Union (now African Union) frameworks.





3.2 Explanations

These findings show that, with three caveats, major regional powers prefer to deploy in non-UN peacekeeping operations. How can this preference be explained? Explanations are based on the classical three levels of analysis suggested at first by Waltz's "Man, the State and War" and used extensively in International Relations literature. I shall therefore look at international level explanations, regional level explanations and domestic level explanations. These explanations do not aim at providing the necessary conditions for certain choices, but they can give a better insight to understand where peacekeeping is going.

Systemic level explanations

1.The major peaks in uniformed personnel contribution tend to shortly follow major tragic events, such as the genocide in Rwanda, the Somali humanitarian crisis, or 9/11.
2.The activism of regional organizations and coalitions of the willing increases as a consequence of the stalemates in the United Nations Security Council.

Regional level explanations

3.Within the geographic areas with a high level of regional integration, the major regional powers tend to deploy in regional organization peacekeeping missions.
4.With one caveat (the European Union), major regional powers choose non-UN missions for interventions in neighbouring areas.

Domestic (and sub domestic) level explanations

5.Regime type does not seem to be able to explain the choice of United Nations or non-UN peacekeeping missions. Nigeria, Russia and China are the three non-democratic states among the cases considered, and their preferences are similar to other democratic countries.
6.The increasing involvement of certain countries can also be explained by the introduction of new military doctrines and the increasing pressure exercised by sub-state military organizations. For instance, the new Indian army doctrine, called Cold Start, can explain the 2005 peak of the Indian army's involvement.

4. Conclusion

In this paper, I have argued that major regional powers tend to prefer deploying in a regional organization or 'coalition of the willing' framework when launching

peacekeeping operations, and have tried to give possible explanations for this phenomenon. As a first step, I clarified what is meant by peacekeeping. Second, I developed a model of how to assess a contribution in peacekeeping operations, mainly looking at the contribution of uniformed personnel, and selected the major regional powers to focus on. Thirdly, I measured States' preferences for various types of peacekeeping. Finally, I developed possible explanations for the results. What are the results emerging from this study?

First of all, it seems clear that there is not a clear trend for preferring a particular type of non-UN kind of peacekeeping. Yet, regional organization's peacekeeping seems to be the first choice within areas where there is a very high level of regional integration, such as the European countries or Nigeria. However, where regional organizations exist but are less strong, there is no common tendency towards UN- or ad hoc coalition missions. On the one hand, China and India deploy in UN peacekeeping operations, preferring, in particular, traditional peacekeeping missions. On the other, states such as the USA, Russia or Australia tend to prefer ad hoc coalition missions. Therefore the 'regional explanation' is good when a regional organization has developed sound security arrangements and when it agrees to deploy peacekeeping missions. In the absence of a strong regional organization, other patterns seem to emerge, involving domestic-level explanations in particular.

Yet, the emergence of a preference for non-UN type of peacekeeping operations, particularly within one's own regional area, can suggest a number of considerations. Why do major regional powers tend to prefer regional deployment or ad hoc coalitions?

First, from this study, it is reasonable to argue that this is linked to the quick timing of such a deployment. Regional powers seem to be willing to deploy in a non-UN context even when they would have the choice of deploying with the UN.

Second, a certain number of regional or ad hoc coalition peacekeeping operations were deployed despite a dubious international consent. I contend that it is easier to circumvent the core principles of peacekeeping by deploying within a regional peacekeeping mission.

Third, certain emerging trends remain to be explained, namely: joint operations between the United Nations and regional organizations, such as the ongoing UNAMID mission in Darfur; and regional-organization missions deployed in the aftermath of a

ceasefire agreement, followed by a United Nations mission, such as in Liberia and in the Democratic Republic of Congo. Even if it is rarer, the converse can also happen: this was the case of CEMAC forces deployed in the Central African Republic after the withdrawal of the United Nations troops (MINURCA). Yet, it is still unclear whether these blurred forms are an emerging trend or just isolated events.

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* This paper would not have been possible without the support of Professor de Guttry and Giuseppe Martinico at the « Sant'Anna » School of Advanced Studies in Pisa. I am grateful to both of them for being always encouraging and supportive.

I They can be UN-led missions, or regional organizations missions or ad hoc coalition missions

II I refer to those missions led by private companies such as the support of International Sanlines to ECOMOG troops in Sierra Leone in 1997 and 1998

III For more on the limits of the vision in phases see Carothers Thomas, "The Sequencing Fallacy", 2007, *Journal of Democracy,* 18(1), pp.12-27

IV Concerning the UN peacemaking activities see http://www.un.org/Depts/dpa/budget.html. All other regional organizations' activities in conflict prevention are even more reduced

V Apart from the UN terminology, various regional organizations, countries, military organizations and corps within an army refer to peace operations by calling them differently. For example, NATO refers more or less to peace operations as "Peace Support Operations" or "Crisis Response Operations; the EU calls them "conflict prevention and crisis management". The British consider peacekeeping as one of several missions that are subsumed in British Military Doctrine under the heading "Commitments out of the NATO area". U.S. Doctrines identifies peace operations as a subcategory of "low intensity conflicts". Moreover, the conception of peace operations is not homogeneous within the State. Within each country (both the host state and countries that are troops contributors), contrasting images of peace operations emerge from the political arena and the civil society, as well as from the media and non-governmental organizations.

VI The peacekeeping missions before 1956 were observation missions, without the deployment of peacekeepers. This means that I also take into account cases in which there was a problem of consent of the host state but then a UNSC resolution approved *ex post* the mission (such as ECOMOG intervention in Liberia or Sierra Leone). For the same reasons, I exclude the latest US intervention in Iraq.

VII Frieden G. A. "Actors and Preferences in International Relations", in D.A. Lake and R. Powell, (Eds.), 1998, *Strategic Choice and International Relations*, Princeton University Press, 39-76

VIII See for example2; K. Allard, 1995, *Somalia Operations: Lessons Learned,* Washington, D.C., National Defence University Press, Angeli Andrea, 2005, *Professione peacekeepers, da Sarajevo a Nassiriyah, storie in prima linea,* 2005, Rubbettino editore, Soveria Mannelli; Barnett Michael, "Humanitarianism transformed", 2005, *Perspectives on Politics*, 3(4), pp.723-740, Bellamy Alex and Williams Paul David, "Who's keeping the peace?", 2005, *International Security,* 29, pp. 157-195

IX On this see for example: O'Hanlon Michael and Singer Paul W., 2003 « The Humanitarian Transformation: Expanding Global Intervention Capacity »,*Survival,* vol. 46, n.1, pp.77-99

X Bellamy Alex J. and Williams Paul D. « Who's keeping the Peace? Regionalization and Contemporary Peace Operations », 2005, *International Security,* 29, 4, pp. 157-195, D. C. Daniel and Caraher, 2006, « Characteristics of Troop Contribution to Peace Operations and Implications for Global Capacity », *International Peacekeeping,* 13, 3, pp.297-315

XI First, the decision to contribute should not be over-interpreted as a clear-cut indicator of the preference of a country to participate in a particular peace operation. In certain cases, countries' interventions have been the result of contingency. For example, the decision of the US to intervene in Somalia was connected to the US State Department's firm wish not to intervene in Serbia in the same period. Western Jon, 2002, "Sources of Humanitarian Intervention", *International Security,* 26(4), pp.112-142; Second, and more importantly, the weight of troop contribution does not tell us anything about the characteristics of this contribution. For example, are the troops inadequately equipped, perhaps because that particular peacekeeping operation is not a priority amongst other security tasks?

This is particularly true for countries in which sensitivity to casualties is low. For example, Bangladeshi soldiers in Rwanda were inadequately equipped even compared to normal Bangladeshi military provisioning. Dallaire Romeo, 2004 *Shakes Hands with the Devil,* Routledge, London, Thirdly, the number of troops is not the only type of contribution a state can engage in.

Funding, training programs, technology, and logistic support can demonstrate a country's preference for a particular kind of mission. For example, Norway and Sweden offered logistical support to the United Nations- African Union mission in Darfur (UNAMID) where troops deployed are actually from the African Union and not from the two Scandinavian countries. Source : Interview with Willem van Dullemen, Military Office, Department of Peacekeeping Operations, United Nations HQ, New York, 10th September 2007. Fourthly, assessment in terms of the number of troops is inadequate for another reason: even if they are, in most cases, the vast majority, troops are not the only way of contributing personnel. Civilian police and military observers can also play an important role, and certain missions may also be civilian police missions, such as the European Union's mission to the Democratic Republic of Congo.

[XII] Adler Emanuel and Barnett Michael (eds.), 1998, *Security communities,* Cambridge University Press, Cambridge, UK

[XIII] Cassese Antonio, 2004, *Diritto Internazionale. Problemi della Comunità Internazionale*, Il Mulino, Bologna

[XIV] For example, for troop contributions per country the most recent data are for June 2007

[XV] Collecting the data has also required some approximations. In every mission, for example, even when mainly troops are deployed, it is common to have a very small number of military observers. Within this kind of missions, I have not distinguished between troops and military observers but I have registered the total number of uniformed personnel in the field, which I deem is a good proxy. Land forces usually are largely dominant but also air and naval forces are often present. I have not distinguished among different kind of military corps but I have considered them as a whole group coming from a particular country. Furthermore, I have included in the analysis both peacekeeping and peace building missions but I have left out of the analysis missions aiming at providing some logistic support. For example, I have not included the DIATM, the logistic mission of the Italian army in Morocco.

[XVI] UNTAG was the United Nations Transition Assistance Group deployed in Namibia from April 1989 to March 1990.

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CENTRO STUDI SUL FEDERALISMO
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After the Irish vote: what shall we do?

by Antonio Padoa Schioppa

Perspectives on Federalism, Vol. 1, single issue, 2009

Abstract

In the article the thesis is presented of a twofold institutional geometry for the European Union, so as to make the present (as well as that to be put in place by the Lisbon Treaty) institutional and decision-making structure compatible with an initiative by a core of EU countries, contemplating to adopt, for all the policies of EU competence -in particular for budget, taxation, foreign policy, defence, the environment, and including future reforms of the treaties-, the majority principle and the co-decision role of the Parliament.

Key-words:

European Union, Irish vote, Lisbon Treaty

In the article the thesis is presented of a twofold institutional geometry for the European Union, so as to make the present (as well as that to be put in place by the Lisbon Treaty) institutional and decision-making structure compatible with an initiative by a core of EU countries, contemplating to adopt, for all the policies of EU competence -in particular for budget, taxation, foreign policy, defence, the environment, and including future reforms of the treaties-, the majority principle and the co-decision role of the Parliament.

Each State of the Union will have the choice between adhering, recessing and opting-out; the core countries, however, will announce in advance their determination, in case of other countries rejecting the initiative, to give birth to a new treaty limited to the signatory countries only. That implies a renewed pro-European political will by governments (among which France and Germany) and an active campaign for a different relationship between popular sovereignty and EU choices.

1. Two impracticable routes If the Irish NO will remain the only one, the Lisbon treaty could perhaps be maintained, annexing a declaration that allows Ireland to opt-out for such matters as defence, abortion, enterprise taxes; and with a second ballot in Ireland, this time a positive one. There is no need to say that the entry into force of the new treaty, which embodies almost all of the provisions of the Constitutional Treaty, would constitute, even with its limits, a very significant advance of the European Union, thanks to a not so small series of innovations of a remarkable constitutional significance: from the Charter of Rights, which is made enforceable, to the decision-making procedure in the Council of Ministers, with a double qualified majority of European governments and population, from the Union's juridical personality to the overcoming of the three pillars, from the augmented role of the European Parliament to the institution of a common diplomatic service, from the new procedures for immigration to a European defence, from the 'gangway' clause to the institutionalization of the Convention for future revisions of the treaties and more, whilst I am not sure that the multi-annual Presidency of the European Council will prove to be a good idea: rotation has its merits. Instead, if more NOs will add up to Dublin's, Lisbon will be dead, as Italian League followers and other anti-Europeans are already declaring. In this second case (that could happen even in the presence of the only Irish NO), two ways out could be: a) to go on with the Nice rules, without proposing anything

new either in their content or in the EU's institutional and decision-making mechanisms; b) to work out a new treaty to replace Lisbon's through a new Inter-Governmental Conference. Both routes look hardly practicable: the second because too risky after two failures, the first because too passive even on issues agreed to by the great majority of governments and national Parliaments; and because, in addition, it blocks progress towards the largely shared objective of an enlargement to countries like Croatia and Serbia, which Nice does not provide for.

2. A new Treaty On the other end of the range of possible strategies there is another idea: c) to promote an initiative aiming to give birth to a new treaty of political union, open to everybody but targeted at the creation of a truly "federal core", contemplating the transfer of fiscal and budgetary powers to the European Parliament, a generalized legislative co-decision, the overcoming of the requisite of unanimity for all matters of Union's competence, including future revisions of the treaty. This new treaty would imply for those ratifying it to abandon the present treaties and to put in place a new pact for the union. The force of this latter proposal lies in the conviction, difficult to be disputed in line of principle, that, even if it is true that no one of the Union's member States (despite the statement, written in the treaties and accepted by all, that binds the States to pursue an ever closer Union) is obliged to bring integration forward up to the point of giving birth to an accomplished federal union, it is also right that those who do pursue that objective be not impeded by the others. The noose constituted by the treaties in force -requiring the double unanimity of governments and ratifications for treaties to be modified- is a cage that risks to prove deadly for the Union's future evolution, because in order to proceed on the path of integration the agreement of all is necessary, also of those who do not want to proceed. There are then several possible routes that can be taken if a group of States wants to give birth to a closer union: to put in place de facto, with simple agreements, a coherent series of new and different practices, as happened with Schengen and with the European Monetary System; to avail oneself of the norm on enhanced integration, already used for Benelux (a treaty in the treaty); to make use of the norm on enhanced cooperations. Or, finally, to give birth to a new treaty in two possible forms: either voted and ratified by all with an opting-out clause for those States that do not want to adopt the innovations beyond the existing treaties, or such that it is binding only for those who sign it and

replaces for them the existing treaties. For those who wish to choose the latter route, in either variant (opting out or new treaty that replaces the present ones for the signatories), the key question is how to define the relations between the existing institutional and normative order and the new order they wish to put in place. If, as is quite likely, the present EU members opposing the new order wish to remain in any case in the economic union and to maintain the present institutional bodies (European Council, Council of Ministers, Commission, European Parliament, Court of Justice), and thus if they claim for themselves the acquis communitaire comprising the present rules and institutions, then, in the absence of a unanimous agreement on the changes to the treaties, perhaps the obstacle can only be overcome by those in favor of the federal core by denouncing the existing treaties. Because the solution contemplating that such a core -obviously open to all member States even later- create a new organization alongside the existing one is clearly out of reality. On the other hand it would be awful and in contradiction with the entire evolution of the European unification process to confine the process of further advancements to the mechanism of inter-governmental cooperation alone, leaving out the Commission, the European Parliament and the Court of Justice. The only solution one can contemplate is then to avail oneself of the existing institutions and adopt a twofold geometry of rules, one conforming with the present rules (Nice or Lisbon if approved), the other reserved to the advanced core. Is that possible? Perhaps it is. The key would be to establish in the new treaty some rules, already being applied, at least partly: in particular, it should be decided that on the matters and actions raised by the advanced core the Council will deliberate with the vote of the core's members only; that the European Parliament co-decides in those cases with the vote of the representatives of the core countries only; while the Commission and the Court could perhaps remain as they are (except for the delicate question of the reduction of commissioners, already considered in Nice).

One shall not forget that a variable geometry, also institutional, already exists for some EU competences, the single currency in the first place! Should there be a clear political will in that direction by a group of States (France and Germany among them), the opposing States could perhaps accept the opting-out mechanism -yes to the new rules, but not for us-, as happened already many times with respect to the Union's competences, for the social policy, for the EMS, for the single currency; the decision-making mechanism could be that, already mentioned, of an institutional variable geometry. It is evident,

however, that at such a step the UK and the other Euro-skeptical States could arrive only if it becomes clear that the States of the advanced core want to proceed in any case, even with a new treaty valid for them only

3. A European government There is a fourth route, which is a variant of the third: d) to promote an initiative with a strong political significance (or better yet a series of initiatives, not necessarily launched by the same member States) supported by several governments, with a proposal attached regarding the institutional and decision-making instruments suitable for attaining its aim. This can be done in particular for such matters as a common energy policy, investments for common infrastructures or for research and new technologies at the European level (the Lisbon agenda applied to community goals), the environment, immigration, common defence (NATO's European pole, enhanced European rapid intervention force), or the creation of European bodies for bank and financial supervision. They are matters for which the subsidiarity principle suggests, indeed requires, to act at the European level, not just at national level.

The big advantage of such an approach is to focus on the objectives, all of them of concrete importance to the citizens of every State of the Union, hence to the European public opinion. As happened in the past, the reform of decision-making procedures would be, so to speak, a fallout of the program goals. A motto like "Today's Europe needs a government called for by its citizens: for security, the environment, energy, research" can resume such an approach. Several of those common policies would already be realizable with the rules in force today, if there were the political willingness to carry them out, resorting in many cases to a qualified majority, when provided by the treaties, or to enhanced cooperations, whose flaw however is to keep the same decision-making procedures as the present treaties, including the veto power and the ensuing limited role of the European Parliament. For other matters -from budgetary and fiscal powers to the European Parliament to environmental policies, from foreign policy to security- it would be indispensable, instead, to change the decision-making rules: first of all the abolishment of the veto and the legislative co-decision of the European Parliament. Which implies to start off with a new treaty. In that case a twofold institutional geometry seems possible, so as not to confine the new policies to the intergovernmental cooperation alone, unacceptable because inefficient and anti-democratic: the joint role of the four institutions

should therefore be kept for the countries in the advanced core. A tuned-up twofold geometry -along the lines outlined above- would allow the core to convincingly invite the countries disagreeing about the new rules to choose to opt-out, instead of blocking the others. In other words, the adoption of that route would imply to propose some very meaningful goals to the European citizens; and to ask to all member States to approve new institutional rules, suitable for attaining them. With the essential proviso that there is the intention to draft a new treaty, replacing the existing ones and valid for its signatories only, if the reform proposal (which includes the opting-out for those in disagreement with it) is rejected by some members.

The proposal of those who wish to proceed along that route should read something like this: "Yes to a new treaty allowing to attain those objectives; either all together even with the opting-out formula, or you recede from the union; or we will go alone with a new treaty that for us will replace the previous ones". Something similar was already devised in Altiero Spinelli's project voted by the European Parliament in 1984. To make this route really credible, the federal core that wants to pursue it should make the commitment to move ahead without using the veto in their proceedings, even before formally abolishing it in the future; and this should be done not only when proposing new rules, but also in enhanced cooperations, in matters where unanimity is required, and even for decisions that today can be taken by a qualified majority: in fact, nothing would prohibit to decide with an internal agreement that within the advanced core what is approved by a qualified majority be considered binding also by those who did not vote for it. And similarly nothing prohibits that the advanced core considers politically binding within the group the vote (consultative only, formally) of the European Parliament when voting in the Council on legislative norms for which the treaties require today a unanimous vote, and when deciding the guidelines of strategic importance in foreign and security policy. As some governments have already done in the past, for example Italy for Maastricht. Moreover, in perspective the ultimate key for further advancements of the European Union that require modifications to norms established by the treaties should be to require for future modifications the super-qualified majority of governments that represent a super-qualified majority of the European population, with the ratification of the respective national Parliaments, and with the previous co-decision of the European Parliament.

It is worth reminding that without an essentially similar norm the federal Constitution of the United States approved in 1787 would not, quite likely, have entered into force. That decisive step will have to be made sometime, otherwise it will not take many years for the Union's involution to become evident and irreversible. The restless dynamic of today's world does not allow Europe to make any other choice or decline, i.e. to exit from the main current of the history of tomorrow's world. The thesis of those who believe (there are many, and very authoritative, from Grimm to Leonard, from Cooper to Reid and others, in Italy too) that the great construction of the Union is already accomplished, that precisely for its amphibian nature of federation/confederation it does not need further constitutional improvements, does not stand in my opinion a thorough political and historical analysis. Even if they do not say it openly, also the national governments are, at bottom, aware of that, as shown, among other things, by the decade long series of unsuccessful but unceasing attempts by the governments at adjusting the treaties to the real needs, which the present rules are patently unequal to.

The European Union is strong and efficient, indeed it already constitutes a world-level power where (only where) it is operating with rules peculiar to a federation of States and peoples, although unique: a single voice in currency, in competition and international trade, a majority-based decision-making procedure, a democratic control by the European Parliament, a proper use of the subsidiarity principle, a correct balance of the three powers.

4. Political will and popular consensus The above strategy should and could be pursued not only in the case of the Lisbon Treaty being ditched, but also if the Irish veto will at last be overcome. Because the Union cannot go on indefinitely like it did in the last ten years, left to the outcome of popular votes distorted by local factors, and in addition by mistakes and misinformation tolerated, when not even directed, by the national governments, who undoubtedly have the prime responsibility for the Union's present standstill. Of course, all that implies a strong political will by a group of governments, first of all the French and the German.

It is necessary that in the European Council the conviction be recreated that they are working at a common endeavor, in the common interest of the Europeans, and above the immediate interests of national politics. Of such a conviction and such a political will no reassuring sign, unfortunately, could be seen for some time and even today. The strong

ideal and ethical tension of the builders of the European integration seems to have disappeared, evaporated. That is disclosed, better than many speeches, by the governments' constant and stubborn will to retain the stricture of unanimity, the overcoming of which is the key for everything: because the true unity of every fellowship, of every human association, political or not, from the ecumenical council to the assembly of cardinals, from the council of ministers to the board of a joint-stock company, from the UN Security Council to a condominium exists if (and only if) who is part of it is willing to accept to be put in the minority. A key role of political initiative and pressure should and could be played by the European Parliament. For too many years now France and Germany have been hiding themselves behind the British vetoes, that in reality constitute for their governments an easy excuse for their not proceeding with institutional reforms. But even in France there is today who starts to openly raise the problem (Le Monde, editorial of June 15, 2008). The ideas of a European pole of NATO and of a common energy policy go in that direction.

Leadership (where are today the Schumans, the De Gasperis, the Kohls?), difficult situations of crisis (think of the turmoil generated by a serious energy or environmental crisis), effective pressure from below (irreplaceable mobilizing action of the federalist and pro-European movements, thrust by regions and local bodies, debating of ideas, other channels of popular mobilization, in particular of young people) have been and still are the three potential midwives of the European unification process. As regards public opinion, the need to present things as they are and to not pretend or deceive oneself that the European national sovereignties still have a future in the world has become urgent. Citizen disaffection with Europe is due to the fact that the link between popular will and political choices, crucial in a democratic regime, is either missing in the Union (in those matters for which the veto power is in force, and in which the European Parliament has no voice) or is concealed and diverted (when choices or non-choices, which are indeed made by the governments sitting in the Council, are deceitfully attributed by the same national governments to Brussels and to the Commission).

Where issues are presented with clarity and where the link is clear, the public opinion's response is similarly clear: it is meaningful that in the polls almost two thirds of the Union's citizens declare themselves in favor of a common defence and foreign policy, and that even in the countries of the recent NOs in the referendums a much larger majority

than that of the NOs states that they want to remain in the Union and hope that it will further develop. A direct connection between the European elections and the candidates to the Presidency of the Commission, through the European political parties, would be very desirable: the EPP could well orient itself in that direction (see Alain Lamassoure's proposal), and other European parties could do the same. As Mario Albertini had perceived, a political Europe will be born and will get public opinion involved when it will be clear that voters' choices do have an influence on the choices of the European institutions: those by the newly-elected European Parliament and those by the Commission, through its President legitimated in turn by the Parliament's vote.

It would be appropriate at this point (as Jürgen Habermas, among others, has recently said) to go over the obvious diversions that vitiate at the root the national referendums and resort to a European-wide referendum, connected to the election of the European Parliament; it will make things clear by posing to the European citizens of each State of the Union a key question on the Union's future perspective, that could be formulated thus: "Do you want: a) to recede from the Union, b) to limit the European integration to the managing of the single market, c) to arrive at a political union of the European States and citizens, that protects them in an effective way, at the local and at the world level, in matters of security, the environment, energy, immigration, and that on the other hand ensures the respect of traditions and national diversities? In this way, the possible options for the future will become clear to the citizens of each State of the Union.

It is not true that young people do not grasp the importance of those problems: on the contrary, receptiveness to a supra-national Europe, sentinel of a world that is becoming more united, is in young people much greater than a few years ago.

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Strengthening the Participation of Local Congresses in the Mexican Constitutional Reform Process

by Rodrigo Brito Melgarejo

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Abstract

On the fourth of July, an initiative presented by the Nayarit State Congress proposing the addition of a second paragraph to Article 135 of the Mexican Constitution was published in the Senate Gazette. The purpose of this reform, as established in the Statement of Reasons, is to increase the participation of State Legislatures in the constitutional reform process, in order to strengthen the federalist principle contained in Article 40 of the Constitution.

Key-words:

Nayarit State Congress, Mexican Constitution, State Legislatures, federalism

On the fourth of July, an initiative presented by the Nayarit State Congress proposing the addition of a second paragraph to Article 135 of the Mexican Constitution was published in the Senate Gazette. The purpose of this reform, as established in the Statement of Reasons, is to increase the participation of State Legislatures in the constitutional reform process, in order to strengthen the federalist principle contained in Article 40 of the Constitution.

On the basis of its doctrine, the Mexican Constitution has been classified as a rigid constitution, since Article 135 of the fundamental law establishes that, in order for additions or amendments made to the Constitution to be incorporated into it, the favourable vote by two-thirds of the congressmen present at the Congress of the Union and the approval of the majority of State Legislatures are necessary. Article 135 creates a special institution known as the "Permanent Constituent Power", composed of the federal and local legislative bodies. The initiative presented by the Nayarit State Congress intends to strengthen the participation of local legislatures in this special legislative body, annexing a second paragraph to Article 135 of the Constitution establishing that any ruling in which constitutional additions or amendments are included, before being submitted for approval and forwarded by the competent legislative committee, shall be sent to the State Legislatures, so that they may report their opinions on the same within a 30-day period, without affecting the final vote reached in accordance with the stipulations currently set forth by the Constitution.

Pursuant to Nayarit's Legislative Initiative, the proposed constitutional reform has four basic merits: a) the States may more actively participate in the constitutional reform process by issuing an early report; b) before being sent for approval by the committee, the report on the initiative will be made, to qualify the opinions expressed by the legislatures and, if necessary, to make the pertinent changes to the proposal under analysis; c) the idea that the report on the initiative made by the competent committee will be submitted rather than the initiative itself, is to prevent any initiative, inadmissible though it may be, from being sent to Congress; and d) it is expressly established that local congresses have a non-extendable period of time to exercise their right to issue an opinion before the proposals for reform are made, thus avoiding delays in the constitutional reform process.

With this initiative, it is intended that the political agenda return to the spirit of strengthening the dialogue between the Federal Legislative Branch and State Congresses,

so that the local Congresses may be heard and can participate in the discussions about constitutional reforms. This way, their participation in the legal review would not be limited solely to pronouncing themselves in favour of or against the proposals for constitutional reform.

This initiative has been assigned to the United Committees on Constitutional Affairs and Legislative Studies of the Senate. The question that comes up now is whether the intention to strengthen federalism through greater participation of local legislatures in the constitutional reform process will be reflected in Article 135, since exactly the same idea was an important part of a constitutional reform initiative presented to the Chamber of Deputies in 2005, whose ruling, is still pending three years on.

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How to re-launch the European unification process?

by Roberto Castaldi

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Abstract

The result of the Irish referendum against the ratification of the Lisbon Treaty has opened a vast debate about this new crisis of the European Union and how to overcome it. I would like to summarise and discuss a few authoritative interventions, among the many interesting views presented in the debate, which point out some unresolved key issues.

Key-words:

Lisbon Treaty, Irish referendum, European Union, unification process

The result of the Irish referendum against the ratification of the Lisbon Treaty has opened a vast debate about this new crisis of the European Union and how to overcome it. I would like to summarise and discuss a few authoritative interventions, among the many interesting views presented in the debate, which point out some unresolved key issues.

The Italian President, Giorgio Napolitano, was invited to speak at the *Etats Généraux de l' Europe* convention organised in Lyon by the European Movement, the *Notre Europe* Foundation and several other organizations on the 21st of June, 2008. In his speech, Napolitano pointed out the need for leadership and vision to complete economic unification with a truly political union. Two virtues which in Italy have been personified by Alcide De Gasperi and Altiero Spinelli. They were defeated on the project of the European Defence Community in 1954, which is now back on the political agenda. The generation that was coming out of the war built Europe to ensure peace among the European states, and they were successful. The new mission is to build a Europe able to promote a peaceful world order and to contribute to the governance of globalization, i.e. to the production of global public goods such as security, economic development, and environmental protection, thus providing answers to the European citizens' sense of insecurity in the face of globalization. New great economic and political powers are emerging and the European nation-states are simply too small to play a role on the global level: only a united Europe can have a chance. The protectionist recipe, the illusion of a fortress Europe, or a European form of isolationism are self-defeating strategies in a fast-moving world.

For this reason, the useful reforms of the Constitutional Treaty adopted by the Convention, weakened by the IGC and then by the Lisbon Treaty, must be adopted. The unanimity dogma must be broken. If a EU with 27 members proves paralysed and unable to reform itself, a group of countries willing to pursue political unification must find appropriate ways to go ahead, like it happened with the Euro. The Irish referendum shows the distance between national governments and their people. The first want to manage European affairs in an intergovernmental and diplomatic way, and use the EU and especially the Commission as a scapegoat for policies they supported and approved in the Council themselves. This produces a consensus crisis which can only be overcome with a greater involvement of the citizens at the European level, more European democracy a stronger European Parliament, and a greater involvement of national parliaments and civil society. It is time for a clear debate about the new reasons for political union and the new

policies which the EU should be entitled to deal with, putting aside the myths of a blank check and of a complete loss of national sovereignty.

France has a great role to play for historical reasons and for its holding the presidency. Italy will support its efforts, as they are both founding countries and share a special responsibility in the European project. History may not leave Europe much time to unite, and play a role in determining its own destiny and contributing to the world order. In a short while, it may be too late.

A few days later, on June 26, Tommaso Padoa Schioppa - president of the *Notre Europe* Foundation and former Italian Minister of the Economy, former member of the ECB Board and of many other European and Italian bodies - published an important article on *Le Monde*. Analysing the priorities of the French presidency, he asked president Sarkozy to always call a vote in the Council about all issues. This would de facto undermine the unanimity principle that paralyses the EU. France always valued its veto power and many countries followed this vision, until this brought to the current paralysis. Unity means deciding and acting together in a democratic way, thus accepting the majority rule, which in the EU usually means a qualified majority. The role of France will depend on its capacity to rally majorities, rather than on the exercise of its veto power. The latter has become largely self-defeating, as the veto is mainly used by other states to block initiatives which France would favour. Institutions and decision-making procedures are the key for Europe to provide new and better policies. Overcoming unanimity is the single most important step in that direction.

These two articles point out several unresolved crucial issues of the current situation and the future projects: is the EU, even with the Lisbon reform in place, able to answer citizens' demands? What's Europe's mission? Is the current institutional setting viable? If not, what are the necessary institutional reforms? What are or should be the actors of the process? What is the task of the political elites? Accordingly, what are the useful strategies to overcome the current crisis? How these issues will be addressed will determine the future of Europe and its role in the world in the middle-term.

President Napolitano observes that the provisions of the Constitutional Treaty have been weakend by the IGC and then in the Lisbon Treaty, and stresses the goal of political union and of greater European democracy. This suggests that the EU has not yet reached a democratic and effective, and thus stable, institutional balance. Furthermore, it lacks several crucial competences, like security, necessary to answer the European citizens' anxieties. Its new mission regards its role in the world, the empowerment of the European citizens in the face of the globalization process, and the creation of a cooperative and effective global system of governance. Having achieved internal peace and the regulated creation of a European single market and single currency by the creation of common institutions, the EU has got now a method and a model for the governance of globalization. Unfortunately, it lacks the institutional means to push it forwards, as it still is an imperfect union: it has reached a full monetary unification, a partial economic one, and a limited political cooperation. The success of the Euro in shielding Europe from the worst effects of the sub-prime crisis and from the 9-fold increase of the oil price in the last few years tells a lot about the strength which unity provides. The failure of the Lisbon economic strategy, left to the national governments' good will and peers' pressure through the open method of cooperation, not to mention Europe's very limited political role on the global scene, as shown in the Iraq crisis and ever since, are equally instructive about the weakness of division.

The current institutional setting is thus inadequate, and a significant reform is needed. As Padoa Schioppa points out, the overcoming of unanimity is the single most important aspect to tackle. If the majority rule will be applied also to the drafting, ratification and future amendments of the Treaties themselves, the EU will come out of the current paralysis with an effective mechanism for taking decisions and for reforming itself . The way would be open towards a more political union. And a two-speed Europe would be a credible option, possibly with the result of convincing all countries to stay on-board in order for them not to be left out, rather than to use their (current) veto to prevent others from pursuing political union.

This brings us back to the current paralysis linked to a double-unanimity requirement: the unanimity of the governments to sign a Treaty, and the unanimity of its

ratification subject to different national procedures. The fact that the Treaty of Lisbon was abandoned because of the Irish referendum, in contrast to 21 countries which had already ratified it, means that about 0,5 % of European citizens can prevent a very vast majority from implementing a decision they all support. This is the absurdity of this antidemocratic system based on a double unanimity.

Furthermore, those who say no do not have to pay any political price for preventing all others from implementing a majority decision or action. Still, the European treaties proclaim the goal of an ever-closer union. The right question for any national referendum should thus be: are you in favor of the new Treaty and wish to remain in the Union, or are you against it and you wish to recede from the Union, possibly agreeing in the future to new and less binding forms of cooperation to be negotiated? Such a question would put a price for voting both Yes and No, and would thus offer a much more reliable picture of the true priority of the European citizens.

All recent referenda, coupled with the fact that a vast majority of citizens is still in favor of a European single defense or a European single voice in foreign policy, suggest that people are tired of their governments deciding behind closed doors and want to be actors in the unification process. A new democratic procedure is thus needed to amend and ratify European treaties. A democratic constituent procedure can take several forms. It can be a constituent co-decision procedure between the European Parliament and the Council; an ad hoc, directly-elected constituent assembly; a constituent mandate given to the European Parliament; a new form of Convention composed of representatives of the European and national Parliaments, but deciding by qualified majority rather than by consensus. But any procedure should foresee in the end a consultative European-wide referendum, rather than many national ones. This would not be against national legislations on referenda. Still, it would make it politically impossible for the political leaders of the countries where a majority of the citizens expressed their support for the new Treaty not to go ahead, leaving onto the others the decision to quit the Union and renegotiate different forms of cooperation.

Obviously, no bold initiative can be taken without a strong political leadership in some European countries, especially France and Germany, and in European institutions, especially the European Parliament. The Irish referendum has precipitated the EU into a

new crisis. This requires leadership and vision. Especially from the two countries which more than any other had an influence on the unification process and also the coming about of the Lisbon Treaty: a result of the French No to the Constitutional Treaty, and of the German ability to struck a deal to save as much as possible of the Constitutional Treaty but in a new form. And even more so from the European Parliament, which directly represents the European citizens, and is going to ask them to renew their trust at the European election of 2009: it must show to be an effective actor in devising a solution and taking the initiative to bring the EU out of the current paralysis.

This issue should rank high on the political programs of the European political parties, which could give the European election a new significance if they will propose their candidate for President of the Commission together with a political program that includes their preferred institutional reforms to better govern the EU.

Links:

President Giorgio Napolitano's speech is available at www.quirinale.it

Tommaso Padoa Schioppa's article is available at www.lemonde.fr

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The Constitutional Court turns its look at Europe

by Paolo Fusaro

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Abstract

With the order of April 15, 2008[I], the Constitutional Court of Italy requested, for the first time, the intervention of the Court of Justice of the European Communities, enabling the mechanism of preliminary deferment in the context of a sentence of constitutionality primarily promoted by the State in relation to the regional law.

Key-words:

Italian Constitutional Court, European Court of Justice, preliminary reference

With the order of April 15, 2008[II], the Constitutional Court of Italy requested, for the first time, the intervention of the Court of Justice of the European Communities, enabling the mechanism of preliminary deferment in the context of a sentence of constitutionality primarily promoted by the State in relation to the regional law.

This law[III] with which the region of Sardinia had introduced a series of so-called "on luxury" taxes had been subjected to the assessment of the Constitutional Court which, with sentence no. 102[IV] of April 15, 2008, had censured its legitimacy in relation to article 3 paragraph. 1, which featured a regional tax on capital gains of second homes for tourist use, and in relation to article 3 paragraph.2, concerning the regional tax on second homes for tourist use.

With the same utterance the Court had, moreover, introduced the separation of judgment concerning the question of constitutional legitimacy of article 3 paragraph 3, investing, with this order, the Court of Justice with the question of the compatibility of this last norm with the communitarian regulations.

This regulation established a regional tax on tourist use of aircrafts and pleasure units, applicable to any physical or juridical person having fiscal domicile outside of the regional territory and taking charge of the operation of an aircraft or a pleasure unit.

This tax, which consequently ends up simply being applied to firms not fiscally domiciled in Sardinia, particular affects firms whose activity consists in putting those units at the disposal of a third party, and those who perform operations of air transportation without compensation and, therefore, fall within the communitarian definition of "general business aviation".

The Region of Sardinia defended itself by affirming that the justification for the tax should be found in the fact that those firms not having a fiscal domicile in the region take advantage of the Region's public services without participating in its funding, whereas those having their domicile in the territory must sustain higher expenses due to the geographical and financial peculiarities linked to their insularity; the taxation was therefore originated by the need to rebalance the financial situation of "non-resident" subjects in relation to that "resident" subjects, with the additional purpose of guaranteeing better sustainability of regional tourist development.

According to the judges of the Constitutional Court, it seems discriminatory to subordinate the payment of the tax by firms performing the same activity to the sole

consideration of the fact that they might or might not have fiscal domicile in the regional territory: this would represent a "selective burden" of the costs for firms without fiscal domicile in Sardinia and would have discriminatory and distorting effects on competition, possibly in contrast with the communitarian regulations concerning the free provision of services (art. 49 of the ECT) and with the ban on State subsidies (art. 87).

Putting aside the mechanism through which the communitarian norms stand out as legal sources in the Italian ordinance, it is appropriate to remember that the current art. 117 Const. imposes upon both regional and national legislation the adherence to the "indentures deriving from the communitarian ordinance".

As reaffirmed in the order of the Constitutional Court, in the case of an appeal proposed primarily by the State having as its object the constitutional legitimacy of a regional law due to incompatibility with the communitarian regulations, these rules act as interjected regulations suitable for integrating, making the parameter for the evaluation of conformity of the regional regulation to art. 117 Const. tangibly operational, with a subsequent declaration of constitutional illegitimacy of the regional regulation considered in contrast with them.

The Constitutional Court has, moreover, revealed that the interpretative solution in this specific case can not be separated from the previous jurisprudence of the Communitarian Court, supposing that this has taken charge, on several occasions, of similar but not identical cases[V] to the "landing tax", verifying the subsistence of a restriction to the free provision of services pursuant to art. 49 ECT, in the case of a specific measure making cross-border services more onerous than comparable national services; in this case, however, the reference was made to the discriminating taxes between national and international flights, between flights with path coverage above or below a specific distance or between domestic and international transportation.

According to the Court, it is therefore necessary to verify whether or not the competitive financial advantage deriving from the exemption from the regional tax of the firms residing in Sardinia falls within the definition of State supply pursuant to art. 87 ECT, considering that this advantage is not linked to the concession of a tax break, but to the minor cost indirectly borne by them in comparison with non-resident firms.

These motivations have therefore induced the Constitutional Court to recognise the opportunity of raising the preliminary question of interpretation in front of the Court of Justice, under art. 234 ECT.

This deferment seems to represent a strong *revirement* with due regard to the position constantly adopted by the Court, which has always excluded, with the exception of an isolated utterance[VI], the possibility of availing itself of the preliminary deferment, inhibiting its own power to directly turn to the Court of Luxemburg.

Close examination of Italian constitutional jurisprudence reveals that, in cases of incidental judgments of constitutional legitimacy, every time the judge *a quo* asked the Court to raise the preliminary question before the Court of Justice, the Court has always affirmed that it is up to the judge *a quo* to take charge of turning to the communitarian judge and, subsequently, returned the acts for a new evaluation of the relevance of the question, affirming that it is exclusively up to the judge to request a communitarian regulation, as presupposition or parameter of the question of constitutional legitimacy, causing "certain and reliable" interpretation by turning to the communitarian Court.

This attitude undoubtedly constitutes a pragmatic applicative corollary of the "separation" between the two ordinances that the Court has always held in its utterances on the structure of the respective normative sources, obtained from art. 11 Const., reflecting the dualistic situation between the two different normative systems, which are in distinct contraposition with the assertion of unified and reciprocal integration between each other, advocated by the European Court.

Therefore, it seems necessary to point out that similar orientation lines up with the common position adopted by almost all the Member States, the tangible use of communitarian preliminary deferments originated by internal constitutional organs of justice having only been considerable in the past under initiative of the Belgian *Cour d'arbitrage*, the Land of Assia's *Staatsgerichtshof,* the Austrian *Verfassungsgerichtshof,* and more recently, the Lithuanian Constitutional Court.

In the case examined, however, the explanation provided by the judges of the Court is different, being linked with the functional peculiarity of the Court itself, which essentially exercises a function of constitutional control, of supreme guarantee of the observance of the Republic's Constitution by the constitutional organs of the State and the Regions[VII].

These attributions make it impossible to recognise the same "national jurisdiction" referred to by art. 234 ECT in the Constitutional Court, since the latter "cannot be included within the ordinary or special judiciary organs, the differences between the task entrusted to the first without records in the Italian ordinance, and those of the jurisdictional organs, being many and pronounced".[VIII]

The setting enunciated above doesn't seem to be completely denied within order no. 103 of 2008, but only partially corrected under the structural difference between the judgment for constitutional legitimacy of a law promoted either as a collateral or as a primary procedure.

Indeed, the sentence states that the Court, "despite its peculiar position as supreme organ of constitutional guarantee within the domestic rules and regulations", constitutes a national jurisdiction under art. 234 ECT and, in particular, a single-level jurisdiction, which allows no appeal against its decisions; therefore, according to art. 234 paragraph 3, the Court does not have the power, but rather the obligation to avail itself of the preliminary deferment, in order to avoid the legitimisation of a possible action of responsibility towards Italy, under art. 226 ECT.

Moreover, whereas in the context of an incidental judgment of legitimacy another subject, the judge *a quo*, can enable the mechanism of preliminary deferment replacing the Constitutional Court, in the judgment of constitutionality promoted as a primary procedure, the Court is the only judge called to utter upon the controversy.

As a consequence, the Constitutional Court states that, in the case of a lack of power to turn to the Court of Justice, "the general interest in the uniform application of the communitarian right would be damaged".

[I]Written by judge Gallo. About this writ we invite to read Pesole Luciana, 'La Corte Costituzionale ricorre per la prima volta al rinvio pregiudiziale. Spunti di riflessione sull'ordinanza n.103 del 2008', in *Federalismi. Rivista di diritto pubblicto italiano, comunitario e comparato*, available at www.federalismi.it; and Spigno Irene, 2008 'La Corte Costituzionale e la vexata questio del rinvio pregiudiziale alla Corte di Giustizia', available at www.osservatoriosullefonti.it.

[II] Written by judge Gallo. About this writ we invite to read Pesole Luciana, 'La Corte Costituzionale ricorre per la prima volta al rinvio pregiudiziale. Spunti di riflessione sull'ordinanza n.103 del 2008', in *Federalismi. Rivista di diritto pubblicto italiano, comunitario e comparato*, available at www.federalismi.it; and Spigno Irene, 2008 'La Corte Costituzionale e la vexata questio del rinvio pregiudiziale alla Corte di Giustizia', available at www.osservatoriosullefonti.it.

[III] Law of Sardinia May 11 2006, n. 4, as amended by law of Sardinia May 29 2007, no. 2. Published in B.U.R on May 31, no. 18.
[IV] We invite you to read Marco Calcagno's article "*The Constitutional Court gives new chance to fiscal federalism, but only for special regions*" in this review.
[V] Sentences January 11 2007, C-269/05, *Commission vs Repubblica Ellenica*; February 6 2003, C-92/01, *Stylianakis*; 26 June 2001, C-70/99, *Commission vs Portugal*.
[VI] Sentence April 18 1991, no 168, in *Foro it.* 1992, I, 660, 6.
[VII] Order December 15 1995, no. 536, in *Foro it* 1996, I, 783; orders July 26 1996, no.319; April 6 1998, no. 108 and no.109.
[VIII] *Ibidem*

CENTRO STUDI SUL FEDERALISMO
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The New Organization of the Islamic Conference Charter

by Giacomo Cavalli

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Abstract

This note analyses the new Charter of the Organization of the Islamic Conference, adopted in 2008.

Key-words:

Organization of the Islamic Conference, reforms, decision making process

The Organization of the Islamic Conference (OIC)[I] is the second largest inter-governmental organization after the United Nations and has membership of 57[II] states from the Middle East, Africa, Central Asia, Caucasus, Balkans, Southeast Asia, South Asia and South America, furthermore two states are attempting to become members (India and Philippines).

The Organization was established by the decision of the historical Summit, which took place in Rabat, Kingdom of Morocco on 25th September 1969 as a result of an arson of Al-Aqsa Mosque in Jerusalem. In 1970 the first meeting of the Islamic Conference of Foreign Minister (ICFM) was held in Jeddah, Saudi Arabia, that decided to establish there a Permanent Secretariat headed by the Organization's Secretary General.

During the 11th OIC Summit held in Dakar, Senegal, a new Charter was adopted unanimously; the new Charter is set to replace the previous version and should speed up OIC decision making processes. It would also create new institutions for the 57 nation body to promote cooperation on different levels among member countries[III].

According to the new Charter, the Organization is composed by the following bodies.

- The supreme authority of the Organization is the Islamic Summit Conference[IV], composed of Kings, Heads of State and Governments of Member States. It convenes once every three years to deliberate, to take policy decisions, to provide guidance on all issues pertaining to the realization of objectives and to consider all other issues of the member states' and the *Ummah*[V]'s concern.
- The Islamic Conference of Foreign Ministers[VI], which meets once a year to examine a progress report on the implementation of its decisions taken within the framework of the policy defined by the Islamic Summit.
- The Permanent Secretariat[VII], located in Jeddah, is the executive organ of the Organization, entrusted with the implementation of the decisions of the two preceding bodies (Prof Ekmeleddin Ihsanoglu is the 9th Secretary General who assumed the office in January 2005 after being elected by the 31st ICFM).
- The Al Quds Committee[VIII], one of the Standings Committees has, among its duties, to follow-up the implementation of resolutions adopted by the Islamic Conference and by other international organizations that support or are in line with the OIC's position; to liaise with other bodies, and to offer to member states proposals it deems appropriate

on implementation of resolutions, achieving their objectives, and on taking steps on developments that may arise within these terms of reference; to implement all Islamic Conference resolutions on the Arab-Israeli conflict in view of the fundamental connection between the Al-Quds question and the conflict.

- The other Standing Committees[IX] are the following: The Standing Committee on Information and Cultural Affairs (COMIAC); the Standing Committee on Economic and Trade Cooperation (COMCEC); the Standing Committee on Scientific and Technological Cooperation (COMSTECH);
- The Executive Committee[X], comprised of the Chairmen of the current, preceding and succeeding Islamic Summits and Councils of Foreign Ministers, the host country of the Headquarters of the General Secretariat as well as the Secretary-General as an *ex-officio* member (OIC Troika).
- The Committee of Permanent Representatives[XI], which the prerogatives and modes of operation shall be defined by the Council of Foreign Ministers.
- The International Islamic Court of Justice[XII], established in Kuwait in 1987 shall, upon the entry into force of its Statute, be the principal judicial organ of the Organisation.
- The Independent Permanent Commission on Human Rights[XIII], established by the new Charter, shall promote the civil, political, social and economic rights enshrined in the organisation's covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values.

The Organization has the exclusive aim to galvanize the Ummah into a unified body and has actively represented the Muslims by espousing all causes close to the hearts of over 1.5 billion Muslims in the world. The Organization has consultative and cooperative relations with the UN and other inter-governmental organizations to protect the vital interests of the Muslims and to work for the settlement of conflicts and disputes involving member states. In safeguarding the true values of Islam and the Muslims, the organization has taken various steps to remove misperceptions and has strongly advocated elimination of discrimination against the Muslims in all forms and manifestations[XIV].

So far eleven Islamic Summit Conferences and thirty-six Councils of Foreign Ministers (CFM) have been held. The Eleventh Islamic Summit Conference, held in Dakar on 13-14 March 2008, elected Senegal as the current Chairman of the Organization. The Secretary General of the Organization of the Islamic Conference, Professor Ekmeleddin

Ihsanoglu, was re-elected for a new term of office at the closing meeting of the 11th Session of the Islamic Summit Conference.

The new OIC Charter was adopted at the Dakar Summit and it replaces the Charter which was registered in 1974 in conformity with article 102[XV] of the United Nations Charter. The objectives and the principles of the Organization as well as their fundamental purposes to strengthen the solidarity and cooperation among the member states of the Organization are clearly reproduced in the present Charter[XVI].

Alluding to the new Charter, OIC Secretary General Prof Ekmeleddin Ihsanoglu said "This amended Charter represents a new vision of the Muslim Word"[XVII].

According to its new Charter, the OIC aims to preserve Islamic social and economic values; to promote solidarity amongst member states; to increase cooperation in social, economic, cultural, scientific, and political areas; to uphold international peace and security; and to advance education, particularly in the fields of science and technology. One of the main objectives of the Organization is to promote the real values and peace ideals contained in the Islam, preserving their religion from the unfounded stereotype that sometimes, most of all in the western countries with the arising of the new terrorism, is commonly spread at the population level. The aim of this positive campaign is surely based on the project of combating the defamation of Islam and encouraging dialogue among civilizations and religions, defending all the Islamic believers that are living in other countries and, nevertheless, to show that member states follow principles based on democracy, rule of law and respect of human rights, as it's in the soul of their true religion principles[XVIII]. Overall, one of the topics contained, is the fight against terrorism in all his forms and manifestation[XIX].

The will of the member states to preserve the integrity of Palestine[XX] is another well documented issue in the new Charter in order to put a target to protect its population in his right of self determination and establishing their sovereign state. In this view, OIC promotes, for the Palestinian people, the right to live in a free country and it candidates itself as an important interlocutor and player that other international organizations or states can't neglect in the Middle East peace process[XXI].

The new collaboration showed by the Organization of the Islamic Conference is definitely based on important principles and respect of as well International Law as democracy, which allows OIC, as a single voice for their member states, to promote new

initiatives for crises managing and collaboration with other international organizations in order to lay the foundations for a new concept of dialogue between states federations.

With the new Charter, the Organization of the Islamic Conference proposes itself as a strategic player for the international relations. The reforms allocated in the Charter, like e.g. the enhanced International Islamic Court of Justice or the new Independent Permanent Commission on Human Rights, follow the models of the other international organizations and give to OIC the credibility of a democratic ideals institution. The role that this Organization can play in crises solving is even more endorsed by the kind of states which are its members; nevertheless, OIC includes countries with ongoing wars, e.g. Iraq and Afghanistan, and countries facing relational difficulties with western states, like Iran or Palestine. OIC could represent the united voice of all Muslims to affront better situations of present danger, a voice maybe stronger than the single member states ones and more considered by the opposite part and by the other Organisations like United Nations, NATO and European Union.

[I] http://www.oic-oci.org/oicnew/home.asp

[II] Afghanistan, Algeria, Chad, Egypt, Guinea, Indonesia, Iran, Jordan, Kuwait, Lebanon, Libya, Malaysia, Mali, Mauritania, Morocco, Niger, Pakistan, Palestine, represented by the Palestine Liberation Organization, Saudi Arabia, Senegal, Sudan, Somalia, Tunisia, Turkey, Yemen Arab Republic, Bahrain, Oman, Qatar, Syria, United Arab Emirates, Sierra Leone, Bangladesh, Gabon, Gambia, Guinea-Bissau, Uganda, Burkina Faso, Cameroon, Comoros, Iraq, Maldives, Djibouti, Benin, Brunei, Nigeria, Azerbaijan, Albania, Kyrgyzstan, Tajikistan, Turkmenistan, Mozambique, Kazakhstan, Uzbekistan, Suriname, Togo, Ivory Coast.

[III]http://www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-EnglishNews/NWELayout&cid=1203758046406

[IV] Ruled by the Chapter IV of the OIC Charter.

[V] **Ummah** (Arabic: أمة) is an Arabic word meaning Community or Nation. It is commonly used to mean either the collective of states, or (in the context of pan-Arabism) the whole Arab world. In the context of Islam, the word ummah is used to mean the diaspora or "Community of the Believers" (ummat al-mu'minin), and thus the whole Muslim world.

[VI] Ruled by the Chapter V of the OIC Charter.

[VII] Ruled by the Chapter XI of the OIC Charter.

[VIII] The Committee convenes its meetings upon invitation of its chairman (the King of Morocco) or the majority of its members. The meeting is considered a regular meeting when attended by the majority. The Committee presents reports to the Islamic Conference of Foreign Ministers, while the General Secretariat provides all facilities necessary to carry out its work. http://www.oic-oci.org/page_detail.asp?p_id=172

[IX] Ruled by the Chapter VI of the OIC Charter.

[X] Ruled by the Chapter VII of the OIC Charter.

[XI] Ruled by the Chapter VIII of the OIC Charter.

[XII] Ruled by the Chapter IX of the OIC Charter.

[XIII] Ruled by the Chapter X of the OIC Charter.

[XIV] http://africanpress.wordpress.com/2008/03/19/oic-moves-to-reduce-inequality-amongst-islamic-states/

[XV] It's ruled by the article 39 comma 3 of the OIC new Charter; article 102 UN Charter : " 1 Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter

comes into force shall as soon as possible be registered with the Secretariat and published by it; 2 No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations."

[XVI] www.oicun.org/articles/37/3/New-Vision-of-the-OIC/3.html

[XVII] http://www.oic-oci.org/oicnew/data/journals/issue7/flip/

[XVIII] All these aspects regarding the Islamic religion defends are included in the Charter at the preamble and at the article 1, comma 12: "To protect and defend the true image of Islam, to combat defamation of Islam and encourage dialogue among civilisations and religions."

[XIX] Ruled by article 1, comma 18: "To cooperate in combating terrorism in all its forms and manifestations, organised crime, illicit drug trafficking, corruption, money laundering and human trafficking."

[XX] Palestinian Permanent Representative to the OIC signed the new Charter on the 18th November 2008. http://www.oic-oci.org/oicnew/topic_detail.asp?t_id=1624&x_key=

[XXI] In the new Charter there are many reminds to the Palestinian people, most of all in the preamble and at article 1, comma 8: "To support and empower the Palestinian people to exercise their right to self-determination and establish their sovereign State with Al-Quds Al-Sharif as its capital, while safeguarding its historic and Islamic character as well as the Holy places therein."

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The Constitutional Court gives fiscal federalism new opportunities, but only for regions endowed with special autonomy

by Marco Calcagno

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Abstract

These are hard times for fiscal federalism. Although many political parties consider it a sort of flag, despite always being present on the political agenda, the implementation of article 119 of the Italian Constitution still looks very far away. Within this stagnating situation, sentence no. 102/2008 discloses optimistic opportunities for Italian fiscal federalism, but only for Regions endowed with special autonomy (hereinafter Special Regions).

Key-words:

Fiscal federalism, Italian Constitutional Court, Special Regions

These are hard times for fiscal federalism. Although many political parties consider it a sort of flag, despite always being present on the political agenda, the implementation of article 119 of the Italian Constitution still looks very far away. Within this stagnating situation, sentence no. 102/2008 discloses optimistic opportunities for Italian fiscal federalism, but only for Regions endowed with special autonomy (hereinafter Special Regions). Indeed, the positive conclusions of the Court cannot be extended to ordinary regions, even though greater fiscal autonomy is particularly required in these regions, which do not currently enjoy the considerable fiscal attributes of the 5 Special Regions.

Sentence no. 2008 of 15 April 2008 sets a clear reference mark for the fiscal power of Special Regions, showing its boundaries and perspectives.

Given these preliminary remarks, we can reconstruct the most relevant passages of the sentence which summarises the constitutional judgement of the regional provisions setting up the so-called "luxury tax". These provisions were included in Sardinian regional law no. 4/2006 in the original version and in regional law no. 2/07 in the version amended in consideration of the initial state censures. But we also have to underline that the sentence makes *expressis verbis* reference to order no. 103/08, where, for the first time, the constitutional judge defers to the European Court of Justice the question relating the consistency of the aforementioned provisions to the EC Treaty: but this is not the right time for these interesting considerations[I].

Therefore, the state government has impugned the regional provisions establishing the 4 taxes on tourism, improperly called "luxury taxes"[II]. In particular, these taxes are: a) tax on the capital gain achieved by selling holiday homes; b) property tax on holiday homes; c) tax on aircrafts and pleasure boats; d) regional visitors' tax.

First of all, the Court investigates the boundaries of fiscal legislative power, which are the constitutional parameters of legitimacy used by the judges. Indeed, the government stated that special regions had the same boundaries as ordinary regions by virtue of the reform of Title V of the Constitution, so that they cannot set up regional taxes while the coordination principles of the fiscal system are still lacking, whereas the Court has the opposite opinion. In fact, the constitutional judge deems that Special Regions have more jurisdiction than others by virtue of art. 10 of constitutional law n° 3/2001. Therefore, when the statute of the Special Region attributes greater powers than the amended Constitution, the parameter of legitimacy referring to the taxes of Special Regions is to be found in the regional statute.

According to this conclusion, the limit that the regional lawgiver has to observe must be in line with the principles of the state fiscal system[III] as stated by art. 8 of the Sardinian statute[IV].

Having clarified the parameter of legitimacy, the Court investigates each tax. With regard to the tax on the capital gain achieved by selling holiday homes[V] located near the sea and destined for use as second residences, the constitutional judge reveals a clear contrast with the principles of the state fiscal system, because the regional tax is superimposed upon the state income tax on real estate capital gains pursuant to art 67 dpr 917/1986 (Tuir). Therefore, the Court declares both the original version of the regional law and the amended one to be unconstitutional. Indeed, judges underline the transgression of the capability contribution principle, considering that the regional tax has the same presupposition as the state tax. Moreover, the Court declares the breach of the principle of reason, considering that non-residents (in Sardinia) are the only persons subjected to this regional imposition.

Also the regional property tax on holiday homes[VI], addressed to non-residents, is stated as being unconstitutional. In particular, the Court not only declares the different treatment between residents in Sardinia and non-residents to be unreasonable, but also underlines an incorrect "reverse discrimination" against Italian citizens who are not resident there. Indeed, when a foreigner owns real estate in Sardinia he is considered as having his fiscal domicile in Sardinia for fiscal law[VII] and, therefore, he is exempted from the regional tax. Moreover, the Court states that the patrimonial *ratio* of the regional property tax is placed upon another state tax, i.e. ICI (municipal property tax), considering that both property taxes have the same presupposition.

Otherwise, the Court declares the regional tax on aircrafts and pleasure boats to be constitutional and places judgement concerning the consistency with the EC Treaty in the hands of the European Court of Justice. The Constitutional Court however declares the government censures to be groundless. Indeed, the constitutional judge states not only the irrelevance of the fact that the regional tax does not refer to tourism subjects[VIII], but also the irrelevance of the fact that this tax is not inspired by the capability contribution principle[IX], considering that this principle has to inspire the whole fiscal system, not each single tax.

Last but not least, let us consider visitors' tax, which Municipalities can enforce by virtue of the regional law[X]. In spite of the fact that the only subjects of this imposition are again non-residents in Sardinia, the Court does not class the different fiscal treatment as unconstitutional, because this discrimination is justified by the destination of the yield to environment and sustainable tourism. The most important aspect of this judgement is the fact that the Court doesn't declare a regional law setting up a municipal tax to be unconstitutional. Therefore, a regional law allowing Municipalities to enforce a visitors' tax is consistent with our constitution.

After the exposition of the judgement synthesis, we can make some remarks that the sentence no. 102/2008 discloses.

New light, but still a lot of shade. If the Court, on one hand, allows Special Regions to set up regional tax even though the coordination principles of the fiscal system are still lacking, on the other, the judge himself sets stringent limits to the regional power.

Regional taxes cannot be placed upon the taxable base of state taxes: otherwise the regional imposition will be declared unconstitutional. Therefore, the question is: how is it possible to achieve fiscal federalism considering that almost every income or asset is already the presupposition of a state tax?

It's reasonable that fiscal federalism occurs in "purpose taxes" (their yield finances particular works) or "commutative taxes" (in exchange for particular services)[XI]. This also is the implicit solution of the Court when it declares visitors' tax to be appropriate: in fact, visitors' tax has been conceived either as a benefit in recognition of the added costs burdening tourist municipalities or as a way of financing sustainable tourism.

The judgement introduces another significant step towards fiscal federalism, but only with regard to Special Regions. Indeed, the constitutional Court admits the presence of a "regional fiscal system" so that the reserve of law pursuant to article 23 of Constitution, required for the institution of any tax, is observed.

The visitors' tax, which Municipalities can put into force, is the first regional tax to overcome the constitutional judgement, which for a long time has represented (and will be probably continue to do so in the near future) a sort of Caudine Forks for fiscal federalism. But the implementation of art. 119 of the Constitution is still defective and we cannot attribute this deficiency to judges: what is really lacking is the political willingness to put into practise the potentialities of fiscal federalism that the amended constitutional reserves

both to ordinary and Special Regions when the constitutional provisions are more favourable in relation to the latter.

[I] We invite you to read Paolo Fusaro's article in this review.
[II] E. De Mita, Corr. Trib., 43/2008 underlines that the expression "luxury tax" is incorrect, because these taxes are related to any state service.
[III] If the reader wants to closely examine the distinction between principles of the state fiscal system and the coordination principles of the fiscal system, we invite him to read G.G. Carboni, La Corte riconosce la più ampia autonomia finanziaria delle Regioni speciali e detta le regole per la costruzione del sistema tributario della Repubblica (nota a Corte cost. n. 102 del 2008), in federalismi.it, no.14/2008
[IV] Consequently we notice that Special Regions, including Sardinia, have greater fiscal power than others, because they can avoid regional taxes in the absence of the coordination principles of the fiscal system, while observing the principles of fiscal system. It's of note that Special Regions can draw this principle from the laws in force.
[V] Art. 3 of the regional law 11 May 2006 no. 4, amended by art. 2, of r.l. 29 May 2007, no. 2.
[VI] Art. 4 of the regional law 11 May 2006 no. 4, amended by art. 3, of r.l. 29 M ay 2007, no. 2
[VII] Precisely in art. 58 of DPR 29 September 1973, no. 600. Please note that the fiscal domicile significantly differs from the fiscal residence.
[VIII] The common denominator of state censures is the fact that these taxes are not referring to tourist subjects, presupposing that art. 8 of the Regional Statute assigns Sardegna complete fiscal power only in the aforementioned subject. On the contrary, the Court considers that Sardinian fiscal federalism can be upheld for all other taxes with different presuppositions from those of the state, not only with regard to tourist subjects.
[IX] We ought to point out the different part played by the capability contribution principle for the regional tax on aircrafts and pleasure boats and that for the value added tax achieved. In this second situation, the Court declares breach of the capability contribution principle because the regional tax is superimposed upon state tax, so that a subject must pay twice for the same income. Otherwise, with regard to tax on aircrafts and pleasure boats, the regional tax doesn't hit the taxpayer twice on the same income, indeed while the regional tax has regressive elements (it doesn't take into consideration the number of calls) the aforementioned principle plays a less relevant part, so the Court states that it must inspire the fiscal system *in complexu*, not each individual tax.
[X] Art. 5 of regional law no. 2/2007
[XI] Therefore, these tributes are stably related to the regional territories, so that "purpuse taxes" and "commutative taxes" are constitutional are financial tools to achieve the policy objectives included in the regional competences (so-called principle of "competence").

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New Consensus On Global Money? A Note

by Fabio Masini

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Abstract

This note deals with the Chinese proposal for a new international monetary architecture.

The Chinese proposal was the last of a series which suddenly appeared on the international diplomatic scene last March: starting from it the author presents a brief reflection on the common elements of such proposals.

Key-words:

Global money, Globalization, Chinese proposal

1. Money as a global public good?

The relationship between policy proposals and economic theories is hardly bi-univocal. Only sometimes economic theories manage to bring public debate to the surface and put pressure on policy-makers. More often the opposite happens: policy-makers demand economic theories in support of their choices.

An interesting question is whether the Chinese proposal for a new international monetary architecture is an example of the former or of the latter. When the Governor of the Bank of China officially proposed the creation of a new super-national reserve currency for the world last 23rd March, Joseph Stiglitz, Nobel Prize Laureate in Economics and President of an ad-hoc *UN Expert Commission*, had just left China where he

"was a guest speaker at Hanqing Institute at Renmin University—an institute which he helped set up and of which he is the honorary dean—giving an address on 'China and Globalisation', in which he urged China to 'make up for the deficiencies of the United States'. On March 16, Stiglitz had been in Shanghai, where he criticised the notion of any single currency serving as a reserve currency. 'The dollar reserve system is part of the problem', he told his audience. Instead, he called for the establishment of a 'global reserve system', which would allow one country to use another country's money, referring to the regional Chiang Mai swap agreements between the countries of East Asia as a model for this" (http://larouchepac.com/node/9792)

It would be easy to overestimate single individuals' contributions to policy-making processes. But it might also be misleading. The question of who comes first (Stiglitz's suggestions or the policy proposal by the Chinese Governor) is not a mere curiosity. Whether the Chinese monetary authority is willing to change the international monetary arrangements and has asked economic theorists for support is very different from the case where some economists calling for a dramatic reform of the international monetary system are only given the opportunity to voice their proposals. In the latter case, an occasional coincidence of views might be the only characteristic of the event; in the former, a more lasting political commitment might be envisaged. Let's try to further reflect on this.

2. The Chinese proposal

One of the most striking features of the already-famous intervention by the Governor of the Bank of China, Zhou Xiaochuan, is the insistence on the structural inadequacy of the present international monetary and financial system. In the lines of his contribution, one can read of the "inherent weaknesses", "inherent vulnerabilities", "institutional flaws" and "inherent deficiencies" of the system (deriving from the so-called *Triffin dilemma*, i.e. the use of a national currency to provide international liquidity, to which Zhou Xiaochuan explicitly refers) which "calls for a creative reform" (http://www.pbc.gov.cn/english/detail.asp?col=6500& id=178).

The main problem is therefore attributed to the existence of a national currency (the US dollar) *both* as a global reserve asset *and* medium of exchange in international foreign transactions. As Triffin pointed out almost fifty years ago, this is an intrinsically vulnerable system to finance the global economy as it creates unsustainable asymmetries between the *issuer* and the *users* of the reserve currency. Firstly, if the international liquidity necessary to finance the growth of worldwide financial and trade transactions can only be provided by issuing new dollars, dollar inflation occurs, undermining its value stability (this is the main reason why its convertibility into gold was suspended in 1971). Secondly, US monetary policy is not constrained by the balance of payments, contrary to every other country; actually, only a balance of payments deficit in the US can provide international liquidity and an incentive exists for increasing global imbalances. This asymmetric process can last indefinitely only if the credibility of the issuing country (the USA) is not undermined economically and politically (in terms of balance of power).

To overcome such problems, the core of the Chinese proposal is "to create an international reserve currency that is disconnected from individual nations and is able to remain stable in the long run". He argues in favour of a sort of parallel currency, to be issued alongside national currencies, representing a basket of the major world currencies.

In truth, Zhou goes a bit further when he recalls the Keynes' proposal at Bretton Woods and the possibility to increase the role of the Special Drawing Rights (SDR). This is quite interesting because SDRs are an existing device which already represent some kind of basket of key international currencies, not a new currency to be agreed upon and created

ex-novo. The composition of the SDR is now set by the IMF rules, which represent the old political framework dating back to over sixty years ago. But the global economic and political balance of power today is very different from what it used to be even a couple of decades ago. A dramatic reform of the IMF would therefore be necessary if a new, credible role should be addressed to SDRs.

In Zhou's words, it would be necessary to expand "the basket of currencies forming the basis for SDR valuation […] to include currencies of all major economies, and the GDP may also be included as a weight". The key question is to understand whether we are at the start of a process that will lead to a common world currency or just at a crucial point in history where a major redistribution of powers is on the cards.

3. Background and follow-up

The Chinese proposal was only the last, most popularised and probably most authoritative, of a series which suddenly appeared on the international diplomatic scene last March. First came the Kazakistan President, Nursultan Nazarbayev, with the proposal of an *Acmetal* (from the Greek, meaning 'best capital'), eager to contrast the predominance of the rouble in some envisaged central-Asian economic and monetary arrangement.

Then the Nobel Prize winner Robert Mundell gave an interview to *The Australian* (March 11th) were he enthusiastically favoured the idea of a new scientific and political effort towards a common device for the settlement of international monetary relations: "I must say that I agree with President Nazarbayev on his statement and many of the things he said in his plan, the project he made for the world currency, and I believe I'm right on track with what he's saying".

On March 18th the President of Russia, Vladimir Putin, suggested including the question of a common global currency in the agenda of the next G20 meeting in London. Several days later, on 26th March, an authoritative critique came from the Director of the Center for International Trade and Economics at the Heritage Foundation, Ambassador Terry Miller. His criticism can be summed up as follows: a) SDRs have no intrinsic value and the faith in IFM is not enough to sustain a credible global monetary device; b) "A one-size-fits-all international currency will not meet diverse world needs"; c) shifting from a

national currency like the dollar to the SDR would result in a loss of transparency, because monetary creation would not be subject to an accountable organism like the Fed; d) the "SDR will create new financial complexities and opportunities for corruption".

On 29th March came the official support of Argentina for the Chinese proposal: the President of the Central Bank, Martin Redrado, said: "Clearly the dollar has suffered a considerable blow and alternatives are needed […] Argentina will work with China within the framework of the G20 and in other multilateral forums to seek these kinds of alternatives". India and Brazil were also later to offer support for this proposal.

On 30th March, a preliminary report by the Commission of Experts on Reforms of International Finance and Economic Structures, a UN body chaired by Joseph Stiglitz, "called for a new globalised system for regulation of currencies. Promoted as a way to help developing nations, the globalised currency proposal is actually an attack on the United States, national sovereignty, and world economic development" as emphatically stated by http://larouchepac.com/node/9792.

The final report of the G20 meeting in London on 2nd April, beyond a new SDR allocation of 250 billions dollars, was definitely disappointing, compared to such previous debate and suggestions. In the *Leaders' Statement*, one can read for example: "we commit to implementing the package of IMF quota and voice reforms agreed in April 2008 and call on the IMF to complete the next review of quotas by January 2011". But the reform package can be seen at http://www.imf.org/external/np/fin/quotas/pubs/.

If one looks at the different simulations (http://www.imf.org/external/np/pp/2007/eng/071107a.pdf), one can see that the USA continues to remain above the veto quota of 15% (all major decisions require at least an 85% qualified majority).

4. Are we moving towards a common world currency?

Doubts are therefore to be cast on the easy syllogism that these sudden and authoritative proposals for a dramatic reform of the international monetary system will lead to some common global currency.

Some commentators are sceptical with regard to this being the goal of the Chinese Central Bank. First of all China needs a credible device to convince the markets not to speculate against the US dollar, because this would result in a huge capital loss for the Chinese reserves. These amount to around 2,000 billion dollars and 1,400 billion are denominated in US dollars. A depreciation of the dollar by about 20% would mean trashing almost 300 billion dollars of Chinese reserves. Not really pocket-money. Furthermore, a devaluation of the dollar would mean a revaluation of the renmimbi and of the euro, which both China and Europe are very reluctant to accept.

This does not mean that there should only be room for pessimism over the possibility to build a new monetary architecture in the world, based on a more balanced weight of the most important currencies in view of a process of increasing stabilisation of the exchange rates and of a final global arrangement towards a common worldwide currency.

Some optimism derives from the unprecedented huge political window which the global recession opened to the perspectives of a global monetary system where the *Triffin dilemma* is avoided from the start, as no *national* currency is to become the *international* reserve currency. But such a window of fundamental political strategies will not last forever, and nobody can predict how long it will remain open. Global imbalances are difficult to tackle with fixed exchange rates or with some "snake", as in the case of the EMS experience. Although we can probably dare to argue in favour of endogenous criteria for optimum currency areas, implying that some common monetary device for international transactions might help macroeconomic convergence, the extension of such a case from the European experience to the world economies is definitely very brave.

Macroeconomic performances, variables and preferences are extraordinarily different worldwide and no one can say with which degree of both flexibility and steadiness a common monetary standard should be designed and managed.

The role of the USA is obviously crucial. Any reform of the existing system cannot be pursued without their agreement. On one hand, they can no longer play the hegemonic role of global providers of monetary liquidity and financial stability. But on the other, the huge US fiscal stimulus to climb out of the recession can only be financed by applying higher taxes, now or in future generations; in both cases, a dollar devaluation could be of great help. It would ease exports and a rebalancing of payments via the current account and

it would decrease the burden of fiscal readjustment. In fact, the day after Zhou's proposal, Geithner and Bernanke dismissed the idea with a firm "no".

5. Concluding remarks

From a strictly economic point of view, all the proposals made last March by authoritative officials and academicians seem to stand for a widespread recognition of the nature of money as a global public good, the stability and "production" of which should therefore not be left to "local" (national) sovereign monetary authorities but to some internationally agreed set of rules.

On a broader scale, we are obliged to try and assess whether such technical point of view is also sustained by strategic considerations concerning the coincidence of the Chinese, Russian, South American and European interests in a new monetary architecture where the role of the dollar is reduced on an equitable basis with other *continental* currencies.

Some very schematic conclusions are suggested by the recent debate. The first conclusion we can draw is that we are still far from reaching a global consensus. The compromises required to move from the old hegemonic stability model to a more balanced multi-centric one are huge and time-consuming.

The second conclusion has a strong normative content: the most effective way to accelerate the process would be to speed up regional monetary arrangements. Regional (continental) processes of monetary integration have been under discussion for many years (even decades in some cases). Paradoxically, today's sudden acceleration of the debate on global reform might slow down such regional experiments: a quick move towards the reallocation of SDRs might discourage regional efforts. We could therefore have a redistribution of voting powers in the IMF without those institutional changes that have characterised the European experience and have been (until now) the reference model for continental or sub-continental integration processes.

Thirdly, Europe can have a crucial role to play thanks to the euro, the only currency with a global status other than the US dollar. Europe should therefore take up its responsibility and clearly state its opinions with regard to the reform, the steps it envisages

and the allies to be sought. But this requires Europe to speak as a single body on the international scene, which still seems unrealistic at present.

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Germany and Europe
The judgment of the Court of Karlsruhe

by Antonio Padoa-Schioppa

Perspectives on Federalism, Vol. 1, single issue, 2009

Abstract

This note provides a brief comment on the *Lisbon Urteil* of the German Constitutional Court. The author points out the ambiguities of the judgment and its possible impact on the European integration process.

Key-words:

Lisbon Treaty, German Constitutional Court, European integration

I.

The judgment of 30 June 2009 issued by the German Constitutional Court on the constitutional profiles of the Treaty of Lisbon and on its ratification in Germany can be summed up in three propositions: 1. the Treaty of Lisbon is compatible with the principles of the German Constitution and can consequently be ratified; 2. the amendments made to the Constitution by the German Parliament in view of ratification of the Treaty are correct; 3. the Act extending the powers of the Bundestag and Bundesrat in view of ratification does not meet the necessary requirements and must therefore be reformulated and approved again before ratification (§ 273 of the judgment).

The judgment is extremely complex and articulate, comprising no fewer than 420 paragraphs. If we were to make a comparison, without this similitude implicating any positive evaluation, the judgment reminds the architecture of a gothic cathedral, with central naves and side chapels, main columns and capital, arches and buttresses, bell towers and watchtowers, using textual subjects and opinions, some expressed and other implied and hidden, with learned juridical arguments and politically tending general judgements. An adequate analysis of this important document would require much more space than is possible in these brief notes.

II.

It comes as no surprise that the main issue, to which most of the space in the argumentations of the Court is devoted (in §§ 274-400), is the first of the three listed above. If we were to sum up the essence in just one sentence, we could state that, for the Court, the fundamental reason for declaring the new Treaty as constitutionally correct lies in the fact that the Treaty does not transform the European Union (EU) into a real federal state: according to the Court, even with the new Treaty, the EU will retain its identity as a complex of institutions which has received and maintains its powers by mandate. The numerous duties and procedures assigned to the EU by the Treaty of Lisbon do not, in the Court's opinion, alter this organisation as a Staatenverbund, which is characteristic of the EU and distinguished by the fact that it juridically differs from the

Staatsverband (§ 233). To use different, more common terminology, we could say that the former has the character of a confederation of states, while the latter corresponds to a federal state.

The second point of the judgment requires no particular comment. As regards the third point summed up above, it concerns the rules of the Treaty of Lisbon which envisage two procedures for the reform of treaties for which no ratification of the EU member states is required: the simplified procedure for the reform of part III on EU policies (art. 48.6 TEU Lisbon), as long as the decision is reached by the unanimous vote of the Council, and the so-called bridging-clause (art. 48.7 TEU Lisbon), which allows the passage (once again only with the unanimous vote of the Governments) from unanimous decisions to majority decisions, including the co-decision of the European Parliament, and therefore the passage to ordinary legislative procedure. For both these procedures, the Court has established that "blank" authorisation is not sufficient, it being necessary for the Bundestag and Bundesrat to vote case by case, should the EU Council decide to activate them. The two branches of the German Parliament will have to reach a decision on the matter before ratification of the Treaty of Lisbon.

The claim which states that the Treaty of Lisbon has not transformed the Treaties into a true, formal European constitution is definitely well founded: not because the text no longer speaks of a constitution – although the words and symbols do play an undoubtedly important role – but because future reforms of the treaties will still require the unanimous consent of the national governments and parliaments of the member states, which will continue to be the "lords of the treaties". However, I think that the judgment strongly underestimates certain aspects which already characterise (and have done for some time) the institutional rules of the EU, as well as certain new elements of the Treaty of Lisbon, which will convey profiles closer to those of a federation to the EU. Let me list a few of them.

The inclusion of the Charter of Fundamental Rights, albeit in a protocol annexed to the Treaty, has a very pregnant constitutional meaning which cannot be missed, if we consider that the Charter becomes in fact enforceable.

The upholding (included in the Treaty) of the principle of democracy as a fundamental character of the EU presents considerable potential, as it implicates a consistent implementation of the principle of popular sovereignty at Union level.

The introduction of the procedure for reform of the Treaties via the proposals of the European Parliament and via the standardisation of the Convention method (art. 48 TEU Lisbon) deeply transforms the lever of future reforms of the EU, including those at institutional level, as they will be promoted by bodies – the European Parliament and the Convention – which constitute the expression of the will of the people at both European and national level. This is of great relevance, even though the restriction of art. 48, which requires the unanimous vote of governments and parliaments for future reforms, remains in place.

The most critical point of the judgment of the German Court, however, regards the role of the European Parliament (EP). The claim according to which it can not consider itself a representative of the people's sovereignty at European level is astonishing. It is simply incomprehensible. The fact that the representation of the various member states is not strictly proportional within the EP does not present an obstacle if we consider that, at national level too, numerous member states have implemented constitutions which envisage corrections to the strict criteria of proportionality on the election of representatives of the people, in order to better protect minorities. Nor is it true that, in federal states, proportionality is a necessary requisite (§ 271), an example being the composition of the United States Senate.

We can (and must) state that the representational nature of the EP still contains several imperfections and that it is necessary to present a uniform electoral law (as envisaged by the Treaties), but we definitely cannot say that the EP elected by universal suffrage – while until 1979 the Assembly of the European Communities had a completely different legal nature – does not represent the will of the people. This claim by the Court is unacceptable and must be rejected.

The EU respects the fundamental principle of democracy which the Court rightly considers to unamendable for the German constitution. European democracy is in fact strongly lacking only in those fields where the EP has no powers of co-decision. For all the numerous and important matters for which the Treaties, including that of Lisbon, demand the unanimous decision of the Council and the simple opinion of the EP, the Union is not democratic, because the will of the people, expressed with the election of the EP, carries no weight; and because refusal by just one national government can block the will of the great majority of governments of the member states, for matters which even the

Treaties reserve to the competences of the Union. This is the real deficit of democracy from which the Union has not broken free so far. Here it would be justifiable to object that the simplified review clauses of the Treaties envisaged by Lisbon have failed to assign a co-decisional role to the European Parliament. This makes it logical to ask, transitorily and until the deficit is eliminated, for the vote of the national parliaments.

To demanding that unanimity be maintained for issues of common interest and for the matters which the Treaties signed by each member state assign to EU is, in my opinion, wholly contradictory. It is an error that must be corrected sooner or later. For issues of common interest, during the last twenty-five centuries, human experience has found no criterion – apart from the drawing lots – other than that of counting votes. The Church began using this system for the papal election in 1179, believing that the qualified majority vote was the expression of none other than the Holy Ghost. Without going that far, how long will it be before the EU abolishes the power of veto too? And how long will it take to acknowledge that in EU legislative provisions – including the reform of the Treaties, as has been envisaged by the United States Constitution since 1787 – the EP must always share a co-decisional power with the Council?

III.

The judgment of the German Constitutional Court has given the go ahead to the Treaty of Lisbon. And this is positive for those who believe the Treaty to contain significant new elements for the EU. However, the main body of the Court's argumentations seems decidedly focused on posing a series of caveats with regard to the future reforms of the Union (this is why I mentioned watchtowers). In particular, the principle by which the will of the people will have to keep on mattering through the vote of the national parliament for any future extensions of European integration, which Karlsruhe Court also acknowledges as constitutionally compulsory according to German law, is highlighted in numerous passages of the motivation. This is said by arguing that otherwise the principle of democracy would be violated, while at the same time the Court admits that European integration is a constitutional obligation for Germany. In fact the Court wishes, through its expressed argumentations and those that are implied, to affirm the hierarchical superiority of the German Constitution, of which Karlsruhe Court is considered to be the undisputed interpreter, over the European Treaties.

At least three objections can be raised.. Firstly, there are important sectors and extensive matters – those under the exclusive jurisdiction of the EU: currency, competition, international commerce, but also all the decisions which the Treaties allow to be made by a qualified majority, including those on budget deficits, which were once the jealously-guarded prerogative of the states – in which national sovereignty has already been superseded. In these fields, it cannot be denied that the EU is already substantially a federation of states. Secondly, the principle of democracy at European level is guaranteed by the universal suffrage election of the European Parliament, for all matters in which it holds co-decisional power, including the appointment of the president of the Commission and of the commissioners. Thirdly, the Karlsruhe judgment implicitly challenges the role of the Luxembourg Court of Justice as the sole Court allowed to give the correct legal and judicial interpretation of the European treatises .

We can say that the European Union is a developing organisation: partly Staatenverbund and partly Staatsverband, to use the terminology of German constitutional doctrine. There is almost the temptation to adopt one of the cardinal principles of modern physics for the EU, according to which light simultaneously observes the laws of a wave and those of a corpuscle, actually being both one and the other at the same time. But as instability cannot last forever in human matters, sooner or later the EU will have to give precedence to one of the two solutions. One leads to the re-nationalisation of policies and to the decline of Europe. The other leads Europe (with its nations and its historical regions, which will not disappear) to be a major actor for the creation of tomorrow's world.

Which of the two routes Germany intends to take in the future is of vital importance for Germany itself, for Europe and for the world. Unfortunately, the German government has recently shown clear signs of weakness in dealing, at European level the economic and financial crisis which could have been (and still could be) a historical opportunity to boost the integration process. Karlsruhe Court has raised more barriers, as questionable with regard to their legal foundation as they are dangerous in terms of politics and from a historical viewpoint. The judgment reveals an attitude of reserve in relation to the future of Europe as a federal union – which would definitely not cancel national individualities – despite the fact that European public opinion, also in Germany,

continues to see the integration process as highly positive, with a majority of over 60 percent of voters.

Should we move forward or retreat along the route taken by the Union half a century ago? For those who have believed in a genuine European vocation by Germany, and still do, the answer that emerges from the judgment of Karlsruhe Court has now become less reassuring.

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India's Temptations and Opportunities… and European Responsibilities. A Short Note

by Fabio Masini

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Abstract

This note provides an overview of some recent documents regarding the Indian position in the current world economy and its key role in the context of international cooperation.

Key-words:

India, financial market crisis, Europe

1. Context and Temptations

On the announcement of a Conference on "India's Macroeconomic Management in the Context of Global Slowdown"[I], organized by the Reserve Bank of India Endowment Unit in Vadodara, India on 6th December 2008, one can read the following statement, which might be interesting to quote at full length:

> "The financial market crisis that erupted in the United States in August 2007 has developed into the world's largest shock since the Great Depression. This has weakened the global economy as the financial turbulence has spread over to the real economy. It has triggered a deceleration in the world economic growth, which is expected to slide even further in the times ahead. There is an impending danger of the rest of the world being dragged into a severe economic slowdown that may eventually inch to wards a synchronised global recession.
> In comparison to the advanced market economies which are on the verge of recession, the rapidly globalising emerging economies have been far more resilient and dynamic – India being one among them.
> In the post-reform period, India stands as an economy that is rapidly – modernising, globalising and growing. India is poised as a fast growing emerging market economy in the face of the current turmoil and pessimism. The resilience shown by India comes from the strong macroeconomic fundamentals. India has weathered the storms of the recent financial market crisis with great strength and stability. India flouts a robust GDP growth rate of almost 9.0 percent in the midst of all international economic mayhem. The household sector is coming to prominence with impressive contribution in the national pool of savings. Rising investment levels and improved productivity are the engines driving growth. Indians have witnessed a doubling of average real per capita income growth during t he tenth plan period.
> The government has progressed towards a fiscal correction. There has also been a sharp rise in net capital inflows. The strong institutional and macroeconomic policy framework in India is further complemented by the gains from trade and global financial integration.
> How India is placed in the face of a global economic meltdown? How vulnerable is the Indian economy? India cannot go unscathed by the all round global economic developments. In the recent period, India has witnessed a slight moderation in her economic growth rate, shooting interest rates, an alarming rise in inflation rate and expected reversals in the capital flows.
> The challenges for India, which has so far been relatively insulated from the financial turmoil, are: How long can the Indian economy resist the impact of global recession? Are the monetary, financial and banking sectors adequately equipped to meet the new pressures?
> The heightened global uncertainty and economic downturn calls for strong monetary and fiscal policy measures and reforms to safeguard India's growth momentum, and to shield it from the inadvertent consequences of the ongoing international financial market muddle. At this juncture, it is pertinent to draw attention to the emerging challenges of the global economic slowdown and the strengths of the Indian macroeconomic policy and planning to cope with it."

Such analysis and strategies echo what is written in the document published as the *Report* (available on-line at http://finmin.nic.in/reports/index.html) of the *High Powered Expert Committee* (a special group set up to assess the prospect of growth of Mumbai as an international financial centre). In the very moment when a *Bretton Woods II* is worldwide demanded to assist the recovery from the recent US-originated financial crisis, it is evident

how the temporary insulation of Indian financial system from the global crisis is a tempting occasion to focus on national responses and defences against the possibility of keeping under strict control the transmission mechanisms of the international turmoil in the near future.

2. The alternative

But India is also aware of the opportunities for greater international cooperation given by the present situation. The crisis is the chance to build a new political and economic global architecture where US hegemony is substituted by a balanced system of continental integrated areas. India is searching for its area of integration and acts on several fields.

The "traditional one" is the East-Asian region, where increasing trade interdependence may lead to greater economic, monetary and financial cooperation. We have already written a longer note on this very issue on this journal (*Asian Monetary Integration in Recent Economic Debates*), concerning the monetary integration process among ASEAN countries and the other major Pacific actors.

But also the India-EU joint Action Plan at http://meaindia.nic.in/ shows the dynamic behaviour by the Indian Government towards industrialized countries. And India looks also somewhere else. The *Opening Remarks* by the Indian Prime Minister and External Affairs Minister at the third IBSA (India, Brazil, South Africa, i.e. new global emerging powers) Summit, held on 13 October 2008, at Vigyan Bhavan, New Delhi, generated an interesting debate about South-South Cooperation for "Shared Prosperity & Inclusive Globalization" (http://meaindia.nic.in/).

The interview by Pierre Rousselin to the Indian Prime Minister, Manmohan Singh and published on *Le Figaro* on 30 September 2008 with the title "India must participate in the solution of the financial crisis" shows that India is well aware of both its strength and on its weaknesses and has therefore to look for several strategies in order to secure its economic growth in the future.

3. European Global Responsibilities

From the European perspective, this double-sided position of India is an opportunity to play a key-role in the shaping of the future new world architecture. It will be mainly a European responsibility to show the rest of the world, and in particular countries like India, that a cooperative solution (with enforcing rules) to the global challenges is the most durable one and the need to provide global public goods is better satisfied when a new architecture of the world economic governance is based on a balanced continental system of powers and not on a hegemonic solution or, even worse, on an autarchic one.

[1] http://www.msubaroda.ac.in//commerce/upload/MSU_RBI_Seminar.pdf

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Asian Monetary Integration in Recent Economic Debates

by Fabio Masini

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Abstract

The articles analyses the issue of monetary integration in Asia taking into account the most recent literature and the main contributes of the last decades both in economics and IR. It locates the debate within regional integration theory and federalism, taking into account the relationship between economics and politics, market and institutions.

Key-words:

Asia, Optimum Currency Areas, monetary integration, economic debate

1. Introduction

In 1992 an interesting paper by M. Dutta on *Economic Regionalization in Western Europe: Asia-Pacific Economies (Macroeconomic Core: Microeconomic Optimization)*, published in *The American Economic Review*, pointed out that two waves of interest in both the economic literature and international diplomacy had considered the opportunity to replicate the European integration process in some Asian countries. The first wave was before and during the Seventies, which saw an increasing interest from Japan and the United States to foster integration in the area; the second in the Eighties, after the 1980 Canberra meeting were the *Pacific Economic Cooperation Conference* was established.

Recently, after the financial and currency crises that hit Asian economies at the end of last millennium and the foundation in Europe of the single currency, a renewed interest towards integration processes in Asia has grown (Whyplosz 2001). In the last four years a vivid scientific debate on such topic has taken place on the main international economic journals.

Such debates are relevant to the theory of federalism for at least two reasons. First, in the theory and history of federalisation processes, monetary integration plays an important role as money is often considered a public good which has to be provided and safeguarded by a public institution representing a collective sovereignty and legitimated through democratic citizenship.

Federalism is based on the struggle against the absoluteness and exclusiveness of national sovereignty and monetary integration provides an institutional economic tool to overcome exclusive national sovereignty and foster political integration.

The second reason is that from a strategic point of view, active political federalism has always advocated the creation of continental groups of countries in order to better and more realistically struggle for greater democratic legitimacy in the world. Asian monetary integration may therefore represent a further step towards this scenario of a multi-polar geography of power worldwide.

But the *institutional approach*, where the process is guided by political institutions to provide a collective public good is not the only approach to monetary integration. Integration has been (Vaubel 1984a; b) - and still is (Buchanan 2004) - considered also as a (more or less) spontaneous process whereby markets attempt to gain greater efficiency, through the decrease of transaction costs and policy costs associated with different currencies. In this case the *institutional content* of the integration process can be minimized (in some cases to zero, in others to a very broad constitutional arrangement).

Three main questions have historically emerged in this field: a) how to cut the world in order to create optimum currency areas and, in the specific case we are examining, which countries to "invite" into a monetary integration process in Asia; b) what model of integration is most suitable for the selected countries and what institutions are required; c) how to manage the transition towards the target.

2. Searching for Optimum Currency Areas (OCA) in Asia

In the debates on Asian integration processes two main questions were on the stage until less than two decades ago: the first was that such process was mainly meant to concern trade agreements; the second that almost all proposals included the United States. Nowadays, trade interdependence among Asian states is a historically consolidated evidence and the debate is concentrating on the need to assist such real side economic interdependence with a sound monetary arrangement aimed at smoothing exchange rates volatility.

On the second point, until very recently some Authors (Mundell 2002; Tae-Joon, Jai-Won, Shinji 2005) considered as a basic need to take into account (if not explicitly as members) the United States as path-making monetary authority in the area. Only in the last few years such a hypothesis has been completely put aside. Today, the question concerning the United States is whether and how urgently Asian countries, and in particular China, should abandon their (almost exclusive) peg with the dollar.

The decision by Japan to officially propose the creation of an Asian Monetary Fund to challenge the Washington Consensus strategy (through the IMF) in 1997 (Lipscy 2003; Amyx 2002), was a testimony of a forthcoming radical change of attitude towards Asian

integration (Wook 2006). Recently, the proposal found new supporters and is now being widely discussed.

As to the question of the territorial-political demarcation for an exchange-rates agreement and a monetary integration process, it is evident how the classical OCA theories (Mundell 1961; McKinnon 1963; Kenen 1969), are still very much used. Many Authors still pretend they can minimize currency union costs through an optimal process to single out the national economic systems that most match the several OCA criteria.

But it is evident how political considerations and geographical proximity are prevalent. A first proposal concerns in fact Pacific Island countries (Browne, Orsmond 2006), where small, open economies seem to meet McKinnon's criteria (trade openness), but the geographical distance shrinks the effective role of Mundell's ones and monocultures definitely run against the capacity to minimize the impact of asymmetric shocks (Kenen's criterion).

Furthermore, for this group of countries, Beeson (2006) considers this solution politically outdated, in favour of a second one, which regards a wider group named "East-Asian countries" as the engine of future integration.

The most likely proposal seems to be for the so-called ASEAN+3 which includes the countries participating in the Association of Southeast Asian Nations (ASEAN: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) plus China, Japan and Korea (Kawai 2008). This was also the territorial basis on which the well known Chiang Mai Initiative (CMI) was put forward for bilateral reserve pooling (Eichengreen 2003) and which has recently (may 2007) reached an agreement on a multi-lateral currency-swap scheme to face financial crises. Some variations of this pattern include Australia, India, New Zeeland and Taiwan (Gudmundssen 2008). The extraordinary growth of India, together with China, in the last few years is bound to change the integration perspectives but nobody seems now to be able to predict the direction it will take.

Another interesting process is taking place among the Arab countries of the Gulf, where the member states of the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates are trying to agree on the terms and schedule of a common market and a monetary union (Al-Mansouri, Dziobek 2006). This area seems to be far ahead in the integration process but is not very much considered by the economic

literature worldwide. It is anyway a further testimony of the fact that economic interdependence has increased also in that area, as well as internal trade, financial transactions and direct investments, leading to a greater and greater quest for monetary stability, especially on the currencies market.

As it is clear from the discussion, the attempts to push on the accelerator of "regional" integration in Asia all envisage delimitations that are founded more on political homogeneity rather than on OCA theory criteria. And the degree of political "sympathy" is likely to affect the success of economic and monetary integration more than macroeconomic performances and convergence. Several Authors (Yetman 2007; Gudmundsson 2008) seem in fact to be well aware of the conclusions of Frankel and Rose (1998) about the endogeneity of optimum currency areas criteria: once a monetary union is established, even automatic, market mechanisms start operating which ease the fulfilment of the various criteria proposed to test the efficiency of the area.

This brings back to the question of the degree of political commitment to start a monetary integration process and the degree of institutional *thickness* it is given.

3. Monetary integration between markets and institutions

Is there any need for a (and what kind of) mechanism to govern the integration process? Should it be the market forces alone or some kind of formalized institutional framework?

Mundell (2002) and Eichengreen (2006) have authoritatively suggested a parallel currency approach to Asian monetary integration. They argue against a *single* currency and in favour of a *common* currency that should be issued along the national ones to ease trade *within* and *outside* the area. It should therefore serve a twofold purpose. The first is internal, i.e. to reduce transaction costs and possibly the volatility of exchange rate expectations. The second is to act as a reference currency for the regional area in a multi-polar world monetary system.

The parallel currency approach is typically a market-oriented approach to monetary integration. But many different kind of parallel currencies may be envisaged. An extreme version of it is the *currency competition*, where a public action is required only at the start to

issue a new currency which is then left to freely compete with the existing ones in the market and possibly increase its appeal through agents' preferences. Also in this case, however, the issuance and control over the quantity of this new additional money is to be attributed to some Monetary Fund, thus requiring some kind of institutional commitment from the participating countries.

Some Authors have argued in favour of a *basket* version of the parallel currency (Kawasaki, Ogawa 2006) where it is considered only as a reference-monetary-sign composed of existing currencies. But even the basket solution is open to many different devices. There are two main possible choices. The first is a common peg towards an external basket, possibly based on a weighted average of some leading international currencies. But as Gudmundsson (2008) underlines, this would mean to give up the final responsibility of monetary policy, as this would be decided by the anchoring currencies. The alternative solution is an internal one, but this poses the usual n-1 problem which requires a hegemonic stability or a strong commitment to monetary policy coordination.

4. Some critical transitional elements

Focusing on East-Asia, a seminal article by Kuroda (2004) has attempted to set a five-steps road-map to monetary union, based on the Balassa (1961) scheme for economic integration and on the European experience. First a free trade area should be created, later evolving in a custom union and then a single market for production inputs and final goods. In the meanwhile a currency agreement could reasonably support such transformation and be finally give way to a monetary union.

This is obviously a typical European road-map to monetary integration. But most commentators underline the need to stress the differences rather than the similarities of both processes and "regions". Asian countries, whatever group is considered, have not undergone any of the political commitments to build a super-national institutional system to guarantee peace as happened to Europe after the second world war. And no institutional arrangement has been set up to give democratic legitimacy to the ongoing trade integration process.

This means that the very final target of non-European integration processes is unknown. The political commitment that guided the European integration process is not replicable on the world scale.

In the absence of a specific political aim, only intermediate economic goals can be targeted, such as domestic business cycle smoothing, greater coordinated response to asymmetric shocks, higher specialization of labour and high rates of growth with minor gaps among commercial partners.

In this respect, it is obviously doubtful whether the countries should commit to any rigid exchange rate regime, even though with a "band" mechanism like the European Erm. Gudmundsson (2008: 81), for example, points out how in this peculiar period of high and divergent growth rates in the area, flexible exchange rates might be necessary to accelerate unsynchronised business cycles and therefore best prepare the conditions for subsequent commitments for a monetary union. Instead of stabilizing exchange rates, Asian countries are invited, under this respect, to promote greater integration of financial markets to absorb the negative effects of exchange rates volatility upon trade. Whatever group should be founded appropriate for monetary integration, the differences in the economic and financial dimension of the participating countries seem to suggest, under this viewpoint, that they would better avoid searching for exchange rates stabilization.

But this strategy will not jeopardize trade integration only if the possible increasing exchange volatility is well absorbed by a mature and integrated financial system, which would probably require many years to grow.

5. Concluding remarks

In the last decade, increasing attention has been placed on the acceleration of regional integration processes aiming at a new international order based on "continental" regional powers.

Monetary integration in Asia is, in this respect, on the agenda of international diplomacies and has become a subject-matter of enquiries in economic theory and policy.

Many attempts are being made to single out optimum currency areas from both economic fundamentals and political considerations. The extraordinary growth of India and China in the last decade has completely changed the scenario. From a loose

aggregation of small or medium economies where Japan and the United States could play a hegemonic role providing a collective public good named "monetary stability" we are now moving to consider stronger integration processes where China's role is fundamental and the increased interdependence requires an acceleration of the integration process.

Monetary integration needs to assist such process and is in fact a more and more debated question both in diplomatic meetings and in scientific literature. Many enquiries try to pick from the European experience to stress the analogies and (mainly) differences. The divergence in macroeconomic performances of the countries involved in the aggregation processes let many commentators be cautious about the type and speed of monetary integration and we may expect further empirical studies to be published in the next years.

Most likely, a more comprehensive approach to the question is needed, where economic theory considerations are assisted by political scenarios for the future evolving situation in Asia and in the whole world. The steps towards some "regional" common monetary arrangement may still represent the most effective strategy to foster greater political integration at a supranational level and this may help accelerate the process of a more legitimate and efficient multi-polar world. But this discussion should not be kept detached from the reform of the international monetary system on the whole.

In synthesis, we believe that some heed should be paid to Mundell's (2002: 9) words: "Does Asia need a common currency? The answer depends on what the alternative to it is. If the alternative is the present system then my answer is 'yes, Asia needs a common currency'. The present system has serious flaws. If, however, the alternative to it is a global currency, which I think would be the best solution, then my answer is Asia does not need a separate common currency".

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From the Constitution for Europe to the Reform Treaty: a literature survey on European Constitutional Law

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Abstract

The aim of this paper is to offer a brief overview of the international literature regarding the European Constitutional Law.
It is possible to identify five groups of studies which will serve as guidelines of this review article:
1. The Constitution for Europe and the constitutional moment;
2. The Constitutional Treaty and the innovations "proposed";
3. The European Court of Justice's activism;
4. The Constitutional stop and the rise of the Reform Treaty
5. The notion and the nature of a Constitution for Europe after the constitutional failure.

Key-words:

European constitutional law, European Union, constitutionalization, fundamental rights

Preliminary remarks

The aim of this paper is to offer a brief overview of the international literature regarding the European Constitutional Law.

European Constitutional Law is an emerging branch of scholarship born after that ideal turning point represented by the Charter of fundamental rights of the EU[I].

Normally by the formula "constitutionalisation" of the EC legal order, authors[II] mean the progressive shift of the EC law from the perspective of an international organization to that of a federal state. Another meaning of constitutionalisation of the EC legal order can be found with regard to the progressive "humanization" of the law of the common market[III].

It is a very famous story which started with judgements by, among others, *Nold*[IV] and *Stauder*[V] and was enriched, in the last years, by judgements by, among others, *Omega* and *Berlusconi*.[VI]

In this respect, the proclamation of the Nice Charter gave - at least- new blood to the debate about the writing of a European Constitution[VII] and the possibility of a Bill of Rights at the supranational level[VIII,] since it testified the possibility to give the rights a written dimension at the supranational level, overcoming the ECJ's logic of *ius praetorium* in this field.

As we know, this document is still not binding from a *stricto sensu* legal point of view: it was just proclaimed by the national governments in Nice without being included in the text of the Nice Treaty.

In this sense we can say that a *fil rouge* in the European constitutional law's history is the continuous attempt to give the Charter a binding effect, trying to insert it in the body of the *acquis communautaire*.

The failure of such a strategy was evident after the Dutch and French referenda, that imposed the transformation of the Constitutional Treaty into a more modest Reform Treaty.

The literature on the Constitution for Europe is huge - although we are going to assume the years from 2001 to 2008 as a reference period -, but perhaps it is possible to identify five groups of studies which will serve as guidelines of this review article:

1. The Constitution for Europe and the constitutional moment;

2. The Constitutional Treaty and the innovations "proposed";

3. The European Court of Justice's activism;

4. The Constitutional stop and the rise of the Reform Treaty

5. The notion and the nature of a Constitution for Europe after the constitutional failure.

1) The Constitution for Europe and the constitutional moment

The start of the works of the Convention on the Future of Europe gave new blood to the classic topic of the possibility of a Constitution for Europe[IX].

In several papers, Neil Walker[X] attempted to "map" the major positions present in the debate, providing the scholars with a very interesting schematization which I will use to classify the huge and pre-existing literature on this issue.

Walker identified four groups of theoretical movements: *constitutional scepticism*, *constitutional serialism*, *constitutional processualism*, *constitutional historical contextualism*[XI].

Within the *constitutional scepticism* he distinguished the deep and the contingent scepticism. The former 'simply holds that the EU is just not the kind of entity that is worthy of characterisation in constitutional terms[XII]'. The latter -defined as 'contingent scepticism'- 'holds that while we should not rule out the possibility of a 'truly' constitutional status for the EU, and so should not entirely dismiss the prospect of a constitutional moment, no such status is yet appropriate and no such moment has yet arrived[XIII]'.

The opposite of this approach would be represented by the *constitutional historical-contextualist* approach, according to which 'the gradual development of a constitutional register of debate and self-interpretation by the ECJ [European Court of Justice] and, gradually, by other European institutions over the past 30 years, provides abundant evidence that the EU already has a constitutional heritage[XIV]'.

The third approach identified by Walker is that of *constitutional serialism* according to which 'European constitutional development is best characterised as an iterative series of constitutional events rather than as a long process of normal politics interrupted by one or very few constitutional moments[XV]'.

Finally, there is the *constitutional processualism* approach according to which:

> 'constitutional discourse and practice within the European Union should not be seen exclusively or even mainly as a matter of Treaties and self-styled constitutional documents. Rather, the test of constitutional relevance should be functional rather than formal, and any activity and any form of reflection that is concerned with the overall legitimacy of the European juridico-political order should be seen in terms of a constitutional register[XVI]'.

Obviously each approach considers the Constitutional Treaty in a different perspective, as the following table attempts to sum up:

Constitutional approaches	**Key concepts**	**Authors**	**How they consider the Constitutional Treaty**
constitutional scepticism	The pillars of this approach can be found in a state-centred perspective of constitutionalism and in the supposed lack of legitimacy and demos- prerequisites of a polity status; in few words, according to this vision the EU lacks that 'sense of common attachment necessary to make decisions which are seriously committed to and capable of addressing matters of common interest and are broadly perceived as	Grimm	The Constitutional Treaty is seen as an example of false constitutionalism, 'a text which illegitimately frames an essentially state-derivative legal configuration in autonomous and original terms, rather than an event which recognises or brings into being a new pouvoir constituant for the European Union'.

	so doing'.		
constitutional historical-contextualism	According to the historical contextualist, the constitutional moment would imply a clear-cut discontinuity and transformation-upon 'a qualitative change within constitutional discourse'.	Weiler	The Constitutional Treaty is seen predominantly as an exercise in documentation
constitutional serialism	'The idea of a defining constitutional moment clearly distinguished from the past and stably framing a constitutional future, is comprehensively challenged'	De Witte; Haltern	The Constitutional Treaty is seen as a part of the European 'tragic cycle of constitutional inflation', the latest expression of that semi-permanent revision of Treaties which characterizes the EU.
constitutional processualism	'Processes and mechanisms which are given little direct recognition within the Treaty structure, such as comitology or OMC or partnership agreements or other "new" forms of governance...[can be seen] as vital constitutional processes which are in danger of being obscured by the focus on surface activity'.	De Burca	'the drafters of the Constitutional Treaty have drawn uncritically on the state template, giving undue attention to matters such as a Bill of Rights, the horizontal division of power between federal-level institutions, the vertical division of powers between "federal" and "state" institutions, external relations etc., in a way which may fail to grasp the *sui generis* quality of the EU order'.

It is possible to start from this classification for reading the literature on the European Constitution appeared on reviews and journals in the last six years.

As Walker himself points out, it is very difficult to clearly cut between the second and the third groups of scholars, for example, thus his classification results so much fascinating as sophisticated.

Among the authors who stress the current existence of a European Constitution, we can distinguish those who identify the Constitution in the EC Treaties and in the ECJ's case law[XVII] from others scholars who conceive the constitution as the result of the never-ending confrontation between national and supranational principles.

This is precisely the case of Pernice[XVIII] and of the supporters of the multilevel constitutionalism approach.

Among the premises of Pernice's theory, we can mention the following: sovereignty is conceived as integrated, while the constitution is seen as a process rather than a document. This Constitution is the outcome of the complementarity of the national and supranational legal orders and these two constitutional levels are parts of a single and composite Constitution. In support of this concept, see Art. 6 of the Treaty on European Union (TEU), which refers to the national constitutional traditions as part of the European Legal order[XIX].

Following Pernice's reasoning, the European Constitution is the result of the coordination between two different legal orders. Pernice sometimes identifies two levels of analysis (national and supranational) while in other cases three or more:

> 'The European Union is a divided power system in which each level of government- regional (or Länder), national (State) and supranational (European)-reflects one of two or more political identities.'[XX]

Or instead:

> 'The European Constitution, thus, is one legal system, composed of two complementary constitutional layers, the European and the national, which are closely interwoven and interdependent, one cannot be read and fully understood without regard to the other'.[XXI]

And:

> "Whatever may be the general qualification (be it regarded as two autonomous and separate bodies of law or be it qualified as two elements in a multilevel

constitutional system), there is no doubt that European and national law are distinct and have each its own source of legitimacy'.[XXII]

This difference, however, is important because the "enlargement" of levels involved in the reasoning helps to increase the "complexity" of the resulting legal order. At the sub-national level, fundamental charters exist and this can cause some problems in their legal coordination.

In fact, these fundamental sub-national charters only sometimes limit themselves to reflecting the values of national Constitutions, but they usually renew the language of rights and principles by modernizing the old provisions of the national Constitutions. In Italy, for example, there is a huge debate on the legal value of some fundamental, rights-based principles contained in the "*Statuti*" (that is, the fundamental charters of the Regions), and the Italian Constitutional Court concluded in case n. 372/2004 that they only have a cultural value.[XXIII]

Another weakness of this approach is its carelessness towards the international level, in spite of the frequent reference to the International Covenants of fundamental rights made by the EU documents and by the ECJ case-law.[XXIV] The exclusion of the international level implies the lack of consideration of the European Convention of Human Rights which was instead fundamental in the ECJ legal reasoning of cases such as *Rutilli,*[XXV] *Ert,*[XXVI] and *Hauer*[XXVII]. The international level was also crucial for the genesis of Art. 6 of the EUT and for the dialogue with the European Court of fundamental rights.[XXVIII]

In a short book, Leonard Besselink[XXIX] presents a criticism of the multilevel constitutionalism's notion on the following grounds: first of all, according to Besselink, '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 sub-ordination, superiority and inferiority'[XXX]; secondly: 'even if the dynamics between the 'levels' are emphasized- the higher level influences the lower one and the lower one tries to influence the higher one- the implicit point of departure is that these are separate levels'.

In a word, the author contests the fact that Pernice describes the "levels" as autonomous legal orders.

On the contrary, by "composite constitution" Besselink means a constitution 'whose component parts mutually assume one another's existence, both *de facto* and de iure'[XXXI].

In Besselink's perspective, the 'levels' are seen as incomplete and interlaced and the dimension of the European Constitution's heteronomy seems to prevail: merely looking at the treaties, in fact, it is not possible to appreciate the important contributions offered to the European constitutional law by elements which are formally external to the treaties (such as the national constitutional traditions and the European Convention on Human Rights).

The idea of mutual relationship is therefore central in this perspective.

After having explained the grounds of his criticism of the notion of multilevel constitutionalism, Besselink moves on to deal with the burning issue of primacy.

Does the primacy principle represent a counter-argumentation to the idea of composite constitution?

Does primacy imply a hierarchical vision of the relationship between legal orders? Given the absence of a perfect impermeability between the EU and national constitutions, the primacy principle as a rule of precedence is construed as a norm conceived with the purpose of avoiding conflicts.

The relation between the EU and member states is not a two-level junction, they do not operate on different levels; on the contrary, they meet '*each other on the same level*' (this way Besselink once again opposes the idea of a multilevel constitutionalism).

Furthermore, Besselink argues that the hierarchical approach is not adequate to explain the relationship between the EU and national constitutions, by reason of the increasing sensitivity shown by the ECJ with regard to the significance of national constitutional identities.

The best instance of such a statement is provided by the comparison between the *Internationale Hadesgeselschaft* doctrine and the recent ECJ case law in the field of human rights (see, for example, *Omega*[XXXII] or *Dynamic Medien*[XXXIII].

The example is not casual, because the field of human rights represents the best example of EU law's constitutional heteronomy, and 'the content of human rights norms within EU Law is largely derived from constitutional sources outside the EU sources in a strict sense: from the point of view of content, the protection of human rights by the EU institutions is heteronomous'[XXXIV].

Concluding this section and looking at the debate, we can therefore say that the ultra-state dimension of such a constitutional entity implies the absence of the classic cultural and constitutional homogeneity which characterized the usual national constitutional dimension[XXXV].

The European Constitution is thus conceived as a *monstruum compositum,* composed of constitutional rules and principles developed at the European level and complemented by (common) national constitutional rules and principles[XXXVI].

In this sense one could conclude that in such a context national law as well as European law partake in defining the European constitutional law.

2) The Constitutional Treaty and the innovations "proposed"

As we know, the Constitutional Treaty attempted to give an answer to many aspects of the so-called European democratic deficit, especially with regard to the following issues: the strengthening of the Commission's authority, the establishment of a stable European Council Presidency, the enhancement of powers for the European Parliament, the democratic legitimacy and the role of national parliaments, the improvement of decision-making efficiency in the enlarged Union, the coherence of European foreign policy.

The long road which conducted to the Constitutional Treaty started from the Declaration of Laeken, which is indeed usually defined as the beginning point of the constitutional moment[XXXVII] and which provided the first European Convention with a mandate consisting of four main themes: the division and definition of powers, the simplification of the treaties, the institutional set-up and the moving towards a Constitution for the European citizens [XXXVIII]. It also convened a Convention in order to examine such fundamental questions and prepare the 2004 Intergovernmental Conference.

The text of the Constitutional Treaty is composed of four parts[XXXIX]:

Part I: Definition of the goals, powers, decision-making procedures and institutions of the Union.

Part II: The Charter of Fundamental Rights of the EU.

Part III: Policies and actions of the Union.

Part IV: Final clauses (revision, entry into force).

The literature focused on the possible implications of such an institutional framework[XL], especially insisting on the figure of the President of the European Council, seen as one of the most important novelties for the efficacy and coherence of the EU's functioning[XLI].

Looking at the coherence question as a dual issue, the scholars stressed the importance that this figure could play at the level of international relations as well[XLII].

He should have taken part in a sort of triumvirate composed also of the Commission President and the Minister of Foreign Affairs[XLIII], that was to be a new role which combined the duties of the present foreign policy High Representative and the EU External Relations Commissioner[XLIV].

The Constitutional Treaty also simplified the legal instruments used in EU action.

The number of instruments used would have been reduced to six: laws (formerly regulations) and framework laws (directives), regulations and decisions (implementing acts), recommendations and opinions (non-binding acts)[XLV].

The Constitutional Treaty overcame the three "pillars" structure, although special procedures were maintained in the fields of foreign policy, security and defence[XLVI].
According to the Constitutional Treaty, the EU was provided with a single legal personality under domestic and international law.

Following the rationale of simplification, the existing Treaties were replaced by a single (although enormous) text and the co-decision procedure was extended, becoming the ordinary procedure[XLVII].

With regard to the "hot issue" of the democratic deficit[XLVIII], the Constitutional Treaty attempted to deal with all of its related aspects, introducing provisions aimed at increasing transparency and effectiveness in institutions[XLIX] and citizens' participation[L], and at strengthening the EU Parliament[LI]'s role. At the same time, a catalogue of competencies was introduced, although the scholars pointed out that it is not a hard list[LII].

At the same time, the Constitutional Treaty contained several articles devoted to the involvement of the national parliaments, also thanks to the provisions regarding the so called early warning mechanism[LIII].

One of the most important novelties was the introduction of a clearly-expressed primacy clause (Art. I-6[LIV]) which codified the ECJ's case-law from the *Costa/Enel*[LV] case: as the literature stressed, the introduction of such a provision had to be read together with Art. I-5 which codified the respect of the national constitutional structures of the member states.

As we know, the EC law's primacy principle, devised by the genius of the ECJ in 1964, is not based on written grounds, despite its diffuse acceptance.

Some authors attempted to investigate the possible consequences of the combination between Art. I-6 -which could mean the end of voluntary obedience and constitutional tolerance- and Art. I-5 which would represent the communitarization of the so called "*counter-limits*" [LVI].

The progressive communitarization of national fundamental principles can be seen as another limit to the EU law primacy, as the scholars have stressed reading together Art. I-5 (Art. 4 of EUT after the Reform Treaty of Lisbon) and Art. I-6 of the Constitutional Treaty (disappeared in the Reform Treaty of Lisbon): in this sense, we can see such a communitarization of the counter-limits as a result of the judicial dialogue between the Constitutional Courts and the ECJ[LVII].

The rapprochement between legal orders is confirmed by the 'structural continuity' between common constitutional traditions and counter-limits. From a theoretical point of view, in fact, the counter-limits are related to the input of the communitarian legal materials in the inner order; the common constitutional traditions, instead, are related to the input of domestic legal materials in the European legal order. Apparently they both follow opposite routes and are inspired by different rationales: the former by the rationale of integration, while the latter by the rationale of constitutional diversification. However, as stressed by Ruggeri[LVIII], thanks to the hermeneutical channel represented by the preliminary ruling, the constitutional principles of the domestic legal orders arise from their origin (national level) and become common sources of EU Law; then these common constitutional traditions return to the origin in a new form, when they are applied by the ECJ. The Charter of Nice itself, included in the second part of the Constitutional Treaty,

can be seen as the outcome of a never-ending interpretative competition between the ECJ and the Constitutional Courts.

Another important point stressed by the scholars is the method followed in the preparation of the Constitutional Treaty, that is, the "Convention method"[LIX], which was also codified as a possible method for the future Constitutional Treaty revision[LX]. Here again I would like to point out the importance which the experiment of the EU Charter of Nice had in the European Constitutional law's history, since the Convention method was introduced for the first time with regard to the process of writing the Nice Charter.

Concluding this part of my review article, it is worth mentioning the curiosity raised by the introduction of the withdrawal clause in the final text[LXI], which put in doubt the real constitutional nature of the Treaty.

3) The European Court of Justice's activism

After the constitutional failure, a new important role could again be played by the ECJ and its judgements.

The difficulties of the ratification process of the Constitutional Treaty, in fact, force us to reflect on possible alternative options. After the refusal of ratification in France and The Netherlands, a lot of doubts and questions about the work of the European Convention and of the Council arose [LXII].

In the history of the European Communities, when the political integration seemed to fail the reasons of the supranational interest found a guardian in the mission of the ECJ. We think that in this case something similar may happen.

In cases like *Pupino* in fact, the Court tried to deepen the reasons of integration by applying, for example, its concepts of the EC Law (the first pillar) to other pillars, in order to extend the prerequisites of the supremacy (direct effect) to the framework decision on the Arrest Warrant.[LXIII] This approach shows an attempt by the ECJ to "horizontally" extend the principles of the first pillar to the other two pillars. All this is occurring after a long period of relative silence, characterized by the prevalence of the political sources of law, due to the semi-permanent revision of the Treaties (Maastricht, Amsterdam, Nice). Now the political sources have to face the refusal of the European peoples and, not by

chance in our opinion, the *cultural* sources of law (first of all the case law of the ECJ) could recover a fundamental role in European integration. A confirmation of this can be found in the new resistance opposed by the Constitutional Courts[LXIV] to the European arrest warrant, that seems to be one of the *Trojan horses* of the European judge in this new phase.

After *Pupino*[LXV], in fact, the scholars began to write about a sort of de-pillarization caused by the above-discussed ECJ case-law.

In the *Pupino* case, reference was made to the Court of Justice of the European Communities by the Florence Tribunal in the criminal proceedings against Maria Pupino.

The ECJ was asked to rule on the following question:

> 'Are Articles 2, 3 and 8 of Council Framework Decision 220 of 15 March 2001 on the standing of victims in criminal proceedings to be interpreted as precluding national legislation such as that in Articles 392(1a) and 398(5a) of the Italian Code of Criminal Procedure, which do not provide that, in respect of offences other than sexual offences or those with a sexual background, the testimony of witnesses who are minors under 16 may be heard at the stage of the preliminary enquiries, in a Special Inquiry ("incidente probatorio") and under special arrangements, for example for the recording of testimony using audio-visual and sound recording equipment?'.

The ECJ argued that the children could be classified as vulnerable victims, giving them right to the special out-of-court hearing, stressing, at the same time, that the granting of such a right would have to be considered in the light of the system of criminal procedure and that the right to fair trial should not be violated.

The Court of Justice concluded its reasoning stressing that the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union.

It pointed out, however, that the obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law is limited by the general principles of law, especially those of legal certainty and non-retroactivity.

Commenting *Pupino,* some scholars have spoken of a third pillar's attempted 'supranationalization' or 'constitutionalization' [LXVI], while other authors have correctly pointed out that the direct effect's principle has not been extended to the framework decision (as it would have been in contrast with the terms of Art. 35 EUT): the Court has "only" extended the obligation of the framework decisions' consistent interpretation (which is a form of "indirect" effect) [LXVII].

In other words, as Piqani[LXVIII] said, the ECJ performed a sort of scission between direct effect and supremacy (better: primacy), in the attempt of avoiding a clash with the letter of the EU Treaty. Obviously, the lack of direct effect itself with regard to the framework decisions and the ECJ limited jurisdiction - according to Art. 35 EUT - provides the consistent interpretation principle with a very peculiar role in this pillar.

Although Advocate General Colomer defined the framework decisions as a sort of directive "surrogate"[LXIX] the Court's role in the third pillar is different, as the ECJ itself has admitted in the *Segi* case[LXX] 'It is true that, as regards the Union, the treaties have established a system of legal remedies in which, by virtue of Article 35 EU, the jurisdiction of the Court is less extensive under Title VI of the Treaty on European Union than it is under the EC Treaty'.

Stressing existing similarities and differences between the first and the third pillar, some scholars have tried to compare the mechanism of the preliminary ruling described by Art. 234 ECT and Art. 35 EUT[LXXI].

The general impression is that a confirmation of the ECJ's different interpretative positions in the third pillar can be found through a comparison between these two provisions: undoubtedly the jurisdiction of Art. 234 ECT seems to be wider than Art. 35 EUT's[LXXII].

Although in *Dell'Orto*[LXXIII] the ECJ strongly stressed the analogy between control mechanisms, scholars[LXXIV] have recently insisted on the non-perfect continuity between *Pupino* and *Dell'Orto* (going through *Advocaten voor der Wereld*[LXXV]).

In *Dell'Orto* the ECJ was asked (the preliminary reference was made by the *Tribunale* of Milan) to rule on the meaning of Articles 2 and 9 of Council Framework Decision of 15 March 2001, on the standing of victims in criminal proceedings and Article 17 of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

It is interesting to notice that several governments had submitted observations questioning the admissibility of the reference for a preliminary ruling; for example, the UK said that the reference for a preliminary ruling was inadmissible, arguing that, in such a case, the reference should be based exclusively on Article 35(1) EU, whereas Article 234 EC was not applicable.

According to the ECJ, the fact that the order for reference did not mention Article 35 EU, but referred to Article 234 EC, could not make the reference for preliminary ruling inadmissible, saying that:

> 'In those circumstances, and regardless of the fact that the questions referred for a preliminary ruling also concern the interpretation of a directive adopted under the EC Treaty, the fact that the order for reference does not mention Article 35 EU, but refers to Article 234 EC, cannot of itself make the reference for a preliminary ruling inadmissible. This conclusion is reinforced by the fact that the Treaty on European Union neither expressly nor by implication lays down the form in which the national court must present its reference for a preliminary ruling (see, by analogy, with regard to Article 234 EC, Case 13/61 De Geus [1962] ECR 45, 50)'.

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These authors argued that in the last two cases the ECJ lost the possibility of specifying *Pupino*'s consequences and emphasized the ambivalence of the Advocate General's Conclusions concerning the EU nature in *Dell'Orto* [LXXVI].

In Herlin-Karnell's words: 'Dell'Orto is much more cautious, although it is true that this does not rule out a more extensive application of a Pupino dogma, should the setting be different[LXXVII]'.

Although the latest judicial developments have shocked the pillars' architecture, I think that the normative triangle provided by ECT Articles 220, 234 and 292 has enabled us to recognize the Community judge's stronger position, which cannot be compared with the one he enjoys in the third pillar.

4) The constitutional stop and the raise of the Reform Treaty

As well explained by Bruno De Witte[LXXVIII], the mechanism for the revision of Treaties presents a double dimension (national and supranational) since it is not entirely governed at the supranational level; on the contrary, it refers to the national constitutional or primary provisions with regard to the ratification process.
Such a double (supranational and national) nature of the Treaties' revision procedure caused several problems to the constitutional moment of the EU.

In order to overcome the critiques on the presumed *elitarian* approach which had characterized the works of the second European Convention, many national governments decided to look for the people's consent through referenda also when they would not be forced to do so according to their national provisions[LXXIX].

Soon after the French and Dutch referenda, the scholars pointed out the reasons behind those "no", providing a very massive literature (journals' articles, instant papers, brief notes and books[LXXX]) on this point.

At the same time, they tried to identify the best strategy to follow for escaping the impasse, suggesting several options: enhanced cooperation, opting out mechanism, repetition of the referenda, the de-constitutionalization of the third part of the text, the production of a new document[LXXXI].

Although the ratification procedure did not stop immediately[LXXXII] after the mentioned referenda, the idea of a "reflection period" prevailed.

A new "input" to the European integration was given by Germany in 2007, when the Berlin Declaration was adopted by all Member States.

This declaration outlined the intention of all Member States to reach an agreement on a new treaty in time for 2009.

On the 21st of June 2007, the European Council met in Brussels and at the end of the negotiations a new mandate for an Intergovernmental Conference was given.

The Reform Treaty was signed by the Heads of State or Government of the 27 Member States in Lisbon on 13 December 2007.

Substantially, the Lisbon Treaty[LXXXIII] does not differ too much from the Constitutional Treaty but, at the same time, some differences exist. The most important

difference consists in the fact that the Treaty of Lisbon amends the precedent Treaties. Moreover, it renounces to unify all the Treaties in one body, since it intervenes on two texts: the European Union Treaty (EUT) and the Treaty on the Functioning of the EU (EUFT).

Secondly, it renamed the Union's Minister for Foreign Affairs, that becomes the "High Representative of the Union for Foreign Affairs and Security Policy".

From a symbolic point of view, it is important to note the disappearance of terms like "Constitution" and "law"; a new series of additional opt-outs have been negotiated, in particular for the UK; because of Polish pressure, the new voting system will not enter into force before 2014; the primacy clause disappeared from the main body of the Treaties (but it is included in a declaration- n. 17 - attached to the Treaties); the Charter of fundamental rights of Nice is not included in the Treaties, although it acquires binding force from Art. 6 EUT (new version).

Concerning the institutions: they seem to maintain the competencies acquired by the Constitutional Treaty, although the scholars stressed the non-exact correspondence between the two texts[LXXXIV], while the national parliaments would have gained more influence (but on this point the scholars are divided[LXXXV]).

Despite its symbolic dimension, nothing special seems to have happened and in Corthaut's words: 'The Reform Treaty looks more like the (evil?) twin of the Constitutional Treaty than its distant cousin'[LXXXVI].

Something similar is argued by Ziller as well[LXXXVII], when he points out that the possibly major changes (the disappearance of the primacy clause, for example) were just functional to overcoming the risk of the national governments' denial, so all this belongs to the rhetoric dimension of the political bargaining.

Ziller argues that, after the constitutional failure, the goal was not to elaborate a new project but to 'translate the "language" of the Constitutional Treaty into the language of the Treaties in force'[LXXXVIII].

Although Ziller denies that this operation of constitutional restyling is an example of 'legal Machiavellism'[LXXXIX], he is forced to admit that this operation could appear to have been conceived with the scope of blurring the issue to public opinion- at least looking at it from the euro-sceptics' view point).

Ziller is perhaps the best "*connoisseur*" of the constitutional art of both Treaties, since he has already written a book[XC] devoted to the analysis of the specific provisions of the Constitutional Treaty (CT).

The author compares the two documents in order to ascertain if, how, and where the "rescued substance" of the CT has been confirmed.

Ziller is aware that only a perfect knowledge of the RT's new geography could allow him to achieve his goal.

The "mission" is quite difficult due to the structure of the new Treaties: the main difference between CT and RT, in fact, consists in the fact that the Treaty of Lisbon amends the precedent Treaties. Moreover, the RT renounces the idea of unifying all the Treaties in one body since it intervenes on two texts: the European Union Treaty (EUT) and the Treaty on the Functioning of the EU (EUFT).

The CT's rescued substance is shown through the aid of several comparative tables by the author, who also tries to highlight what he calls the 'lost substance', providing the reader with a complete overview of the post-constitutional situation.

Then the author attempts to emphasize the persistence of the constitutional substance despite the de-constitutionalized form .

Ziller compares the Reform Treaty to Lemuel Gulliver (the well known character devised by the genius of Jonathan Swift): a giant bridled by several laces represented by Protocols and Declarations.

This image pictures the difficulty underlying an enlarged European Union, which risks not to "work" because of the expedients of a very complicated text.

Another metaphor used by the author to describe the new configuration of the Treaties after Lisbon is that of the 'Butterfly-Treaty' whose wings would be represented by the EUT and the TFEU, while its main body would be constituted by the Charter of Nice[XCI].

Some conclusive remarks on a possible comparison between the two books I have reviewed: as remarked at the beginning of this paper, their perspective, structure and aims are very different.

It is worth spending a few lines on the authors' conception of the current constitutionalization process.

The final impression I have gained from reading Ziller's volume is an optimistic one: the Constitutional Treaty was a text rich of virtues and faults but it attempted to

introduce several significant innovations, which have been drawn up again in the Reform Treaty.

In this sense, the Lisbon Treaty represents a good chance for the European Union and it maintains a constitutional substance, it is a 'mechanism for going on'[XCII], although it presents itself as a fragile butterfly.

Having understood this, it is clear that the primacy principle is a fundamental part of the *acquis communautaire* since it was devised by the ECJ in 1964 and that it will resist after the constitutional failure.

On the June 13 2008, the Irish people voted "no" to the (new?) Lisbon Treaty. Soon after the result of the referendum, Jose Manuel Barroso, President of the European Commission, declared that 'The ratification process is made up of 27 national processes, 18 Member States have already approved the Treaty, and the European Commission believes that the remaining ratifications should continue to take their course'[XCIII]

What about the Reform treaty now? In June 2001 Ireland said no to the Nice Treaty, and despite this political precedent the referendum was attempted again[XCIV]. Are we dealing with a similar scenario?

5.) The notion and the nature of a Constitution for Europe after the constitutional failure

As we saw above, some scholars have insisted on the continuity existing between the Constitutional Treaty and the Reform Treaty[XCV], while other authors stressed the sense of disappointment which would characterize the document, defining it just (and perhaps merely) as a "Post-constitutional Treaty" [XCVI].

According to Somek in fact:

> 'A post-constitutional ordering, by contrast, cannot settle contested issues, for it cannot find sufficient support for a clear solution. A post-constitutional norm does not speak with one voice. It is a document recording the adjournment of an ongoing debate. Maybe this is addressed by those talking

about the Union's alleged lack of a *pouvoir constituant*. Ideally, a constitution is about channelling political dealings, not about postponing their resolution'.[XCVII]

A very good contribution to the debate regarding the notion and the nature of the Constitution for Europe was given by Leonard Besselink[XCVIII].

In Besselink's vision, the notion itself of Constitution as applied to the EU results ambiguous, being more suitable that of fundamental law (*Grundgesetz* instead of *Verfassung*).

This seems to imply a sceptical approach to the issue of the 'formalization' of a European Constitution conceived as a *constitutional moment*.

The author reaches this conclusion after having distinguished between two categories of constitutions: the 'revolutionary' constitutions and the 'evolutionary' ones:

'The former find their origin in some major political cataclysm, a revolution, a war or other political atrocities, to which they are the political response, the original cataclysm functioning as the moving myth inspiring life into the constitutional project... These revolutionary constitutions tend to have a blueprint character, wishing to invent the design for a future which is different from the past... Old fashioned historic constitutions are, to the contrary, evolutionary in character. They take in past experiences in a more inclusive and constructive manner. Codification, consolidation and adaptation are more predominant motives than modification. The constitution reflects historical movements outside itself[XCIX]'.

The semi-permanent revision process of the Treaties[C] makes the attempt to translate the idea of Constitution at the supranational level very difficult: the Constitution, in fact, should be the fundamental charter, that is, a document characterized by a certain degree of resistance and continuity.

Against this background, the European Treaties seem to be unable to lead the social forces, they can only 'reflect the historical movements', they seem to be snapshot constitutions. This is precisely what Besselink argues writing that: 'a formal EU 'constitution', if ever realized, would only be a momentary reflection, no more than a snap-shot; it would be a *Grundgesetz* rather than a *Verfassung*[CI]'.

Probably it is possible to frame Besselink's distinction between evolutionary and revolutionary constitutions in the wider reflection on the so-called "*post-modern constitutionalism*".

According to Volpe[CII], it is possible to notice the impact of postmodern crises on the categories of constitutional law and on the notion itself of constitution. Constitutions (which would belong to the space of "meta-narrations"), conceived as the foundation of social coexistence, would be involved in the postmodern crisis, since in this context Constitutions would be conceivable only as "protocols", i.e. general procedural and organizational rules, functional to the spread of technology. Against this background, the constitutional discourse could not be based on strong and substantive values or fundamental goals, and the only dimension for the constitutional form would be the dimension of the 'achievement- constitution'.

> 'With this definition (costituzioni "bilancio") Mortati explained the periodical constitutional reform typical of socialist countries owing to the Marxist doctrine, according to which a constitutional reform is the in time necessary and progressive adjustment of formal constitution to the achievements reached in the social order'[CIII].

These types of constitutions could not manage and tackle the social coexistence; on the contrary, they could render an image of reality, suffering from the dynamics of the market.

The image of the snapshot constitution explains the metamorphosis of constitutions and explains why 'in European Law we do not know exactly where the boundary is between 'constitutional' and 'ordinary' law, just as is the case with other constitutions of the 'historic type' '. This conclusion is partially due to the lack of a clear hierarchy of legal sources in the EU, but also to the progressive "ordinarization" of constitutions (caused by their never-ending changes): now, given the above, the fundamental nature itself of constitutions is -at least- put in doubt.

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[xiv]Walker Neil, 2003, 'After *cit.* The classical example is provided by Weiler Joseph, 2003, "In Defence of the Status Quo: Europe's Constitutional Sonderweg,' in Weiler Joseph- Wind Marlene (eds.), *European Constitutionalism cit*: 7-26.
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[L]Auer Andreas, 2005, 'European Citizens' Initiative', in *European Constitutional Law Review*: 79-86.

[LI]Gerkrath Jörg, 2005, 'Representation of citizens by the EP', in *European Constitutional Law Review*: 73-78.

[LII]de Búrca Gráinne, 2005, 'Limiting EU Powers', in *European Constitutional Law Review*: 92-98. Mayer Franz, 2005, 'Competences Reloaded: The vertical division of powers in the EU after the new European Constitution', in *International Journal of Constitutional Law*: 493-515; Anzon Adele, 2003, 'La delimitazione delle competenze dell'Unione europea', *Diritto pubblico*: 787- 807; Biondi Andrea, 2004, 'Le competenze normative dell'Unione' in Rossi Lucia Serena (ed.), *Il progetto di Trattato-Costituzione cit.*:123-138; Craig Paul, 2004 'Competence: clarity, containment and consideration', in Pernice Ingolf et al. (eds), *A constitution for the European Union: first comments on the 2003-draft of the European convention*, Nomos Verlagsgesellschaft, Baden-Baden: 75-93; D'Atena 2004, Antonio, 'Subsidiarity and division of competencies between European Union, its member states and their regions', in Miccù Roberto- Pernice Ingolf (eds.), *The European cit.* 135-140; Pizzetti Franco, 2003, "Le competenze dell'Unione", in F.Bassanini-G.Tiberi (eds), *Una costituzione per l'Europa cit*: 47-75.

[LIII]Peters Jit, 2005, 'National Parliaments and Subsidiarity: Think Twice', in *European Constitutional Law Review*: 68-72; Ferraro Fabio, 'Il ruolo dei parlamenti nazionali nella fase ascendente del diritto dell'Unione europea', *Diritto pubblico comparato ed europeo*, 2003: 183-192; Mencarelli Alberto, 2002, 'Quale ruolo per i parlamenti nazionali nell'Unione europea?', http://www.federalismi.it/federalismi/index.cfm?Artid=624; Morviducci Claudia, 2003, 'Convenzione europea e parlamenti nazionali: quale ruolo?' in *Rivista italiana di diritto pubblico comunitario*: 551-583; Morviducci Claudia, 2003, 'Convenzione europea e ruolo dei parlamenti nazionali: le scelte definitive' in *Rivista italiana di diritto pubblico comunitario*: 1061-1095

[LIV]Among others see:. Kwiecien Roman, 2005, 'The Primacy of European Union Law Over National Law Under the Constitutional Treaty', in *German Law Journal*: 1479-1496; Mayer Franz, 2005, 'Supremacy Lost? – Comment on Roman Kwiecień', in *German Law Journal*: 197-1506; Reestman Jan Herman, 2005, 'Primacy of Union Law', in *European Constitutional Law Review*, 104-107; Ferreres Comella Victor- Mattias Kumm, 'The primacy clause of the constitutional treaty and the future of constitutional conflict in the European Union', in *International Journal Constitutional Law*: 473-492.

[LV]ECJ, Case C-6/64, *Costa vs Enel*, 1964, ECR, 1141.

[LVI]This formula has been introduced in the Italian scholarly debate by Paolo Barile: Barile Paolo, 1969, 'Ancora su diritto comunitario e diritto interno' in *Studi per il XX anniversario dell'Assemblea costituente*, VI Firenze, 49 ff.

[LVII]The model of Art. I-5 is undoubtedly represented by Art. 6 EUT ('current' version), which efficaciously described the proximity between common constitutional traditions and national fundamental principles: in this article, in fact, these two kinds of legal sources (common constitutional traditions and national fundamental principles) are mentioned in two subsequent paragraphs.

Here it suffices to recall the reference that Art. 6 ('current' version), para. 2, makes to the common constitutional traditions, and the reference to the "national identities" of its Member States that is set in para. 3 of Art. 6. I argue that within a legal context, by the formula "national identities", the European legislator meant the constitutional identities of the Member States, that is the counter-limits, as defined by national constitutional courts. In this sense we can say that Art. I-5 of the Constitutional Treaty has only expressly

codified such an interpretation by speaking about "constitutional structure" and in this way it delivered the interpretation of the counter-limits to the ECJ.

[LVIII]Ruggeri Antonio, 2003, 'Tradizioni costituzionali comuni" e "controlimiti", tra teoria delle fonti e teoria dell'interpretazione' in *Diritto pubblico comparato ed europeo*: 102-120.

[LIX]Rasmussen Hjalte, 2005, 'The Convention Method', in *European Constitutional Law Review*, 141-147; Closa Carlos, 2004, 'The Convention method and the transformation of EU constitutional politics', in Erikssen Erik Oddvar *et al*, 'Developing a European constitution', Routledge, London: 183 ff.

[LX]de Witte Bruno, 2005, 'Revision', in *European Constitutional Law Review*: 136-140.

[LXI]Herbst Jochen, 2005, 'Observations on the Right to Withdraw from the European Union: Who are the 'Masters of the Treaties'?', in *German Law Journal*: 1755-1760.

[LXII]To define all its ambiguities, J.Bast uses the formula "reflexive constitution". See Bast Jürgen, 2005, 'The Constitutional Treaty as a Reflexive Constitution', *German Law Journal*: 1433-1452.

[LXIII]Kowalik-Bańczyk Krystyna, 2005, 'Should We Polish It Up? The Polish Constitutional Tribunal and the Idea of Supremacy of EU Law', in *German Law Journal*: 1355-1366.

[LXIV]On the European Arrest Warrant saga see Pollicino Oreste, 2008, 'European Arrest Warrant and Constitutional Principles of the Member States: A Case Law-Based Outline in an Attempt to Strike the Right Balance Between Legal Systems', in *German law Journal*: 1313-1354.

[LXV]ECJ, Case C-105/03, *Criminal Proceedings against Maria Pupino* 2005, *ECR*, I-5285.

[LXVI]On this concept: Lebeck Carl, 2007, 'Sliding Towards Supranationalism? The Constitutional Status of EU Framework Decisions after Pupino' in *German Law Journal*: 501-532.

[LXVII]Fletcher Maria, 2005, "Extending 'Indirect Effect" to the Third Pillar: the Significance of Pupino' , in *European*
Law Review: 862 ff.

[LXVIII]See, Piqani Darinka, 2007, 'Supremacy of European Law revisited: New developments in the context of the Treaty Establishing a Constitution for Europe', http://www.enelsyn.gr/papers/w4/Paper%20by%20Darinka%20Piqani.pdf; about the relationship between primacy and direct effect, see also Claes Monica, 2006, *The National Court's cit,* 589; Spaventa Eleanor, 2007, 'Opening Pandora's Box: Some Reflections on the Constitutional Effects of the Ruling in Pupino', in *European Constitutional Law Review*: 5-24.

[LXIX]AG Conclusions of 12 September 2006, C-303/05, *Advocaten voor de Wereld,* ECR 2007, I-3633

[LXX]ECJ, Case C- C-355/04 P, *Segi and other/ Council*, ECR .2007, I-1657.

[LXXI]See Munari Francesco- Amalfitano Chiara, 2007, 'Il 'terzo pilastro' dell'Unione: problematiche istituzionali, sviluppi giurisprudenziali, prospettive', in *Il Diritto dell'Unione Europea*: 773-809, 780-784.

[LXXII]*Ibidem*, 780 ff

[LXXIII]ECJ. Case C-467/05, *Giovanni Dell'Orto*, 2007, ECR, I-5557. "*First of all, it should be noted that, in accordance with Article 46(b) EU, the provisions of the EC and EAEC Treaties concerning the powers of the Court of Justice and the exercise of those powers, including the provisions of Article 234 EC, apply to the provisions of Title VI of the Treaty on European Union under the conditions laid down by Article 35 EU. Contrary to what is argued by the United Kingdom Government, it therefore follows that the system under Article 234 EC is capable of being applied to the Court's jurisdiction to give preliminary rulings by virtue of Article 35 EU, subject to the conditions laid down by that provision (see, to that effect, Pupino, paragraphs 19 and 28)".*

[LXXIV]See Herlin-Karnell Ester, 2007, 'In the Wake of Pupino: Advocaten voor der Wereld and Dell'Orto', in *German Law Journal*: 1147-1160.

[LXXV]ECJ, C-303/05, *Advocaten voor de Wereld,* ECR 2007, I-3633. In *Advocaten* the Belgian *Arbitragehof* made reference to the Court of Justice of the European Communities concerning the assessment as to the validity of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

[LXXVI]Herlin-Karnell Ester, 2007, 'In the Wake 1157.

[LXXVII] *Ibidem*, 1160.

[LXXVIII]de Witte Bruno, 2004, *The National Constitutional Dimension of European Treaty Revision – Evolution and Recent Debates, The Second Walter van Gerven Lecture*, Europa Law Publishing, Groningen.

[LXXIX]Ziller extensively studied the different options of national ratification according to the national constitutional provisions: Albi Anneli- Ziller Jacques (eds.), 2007, *The European Constitution and National Constitutions: Ratification and Beyond*, Alphen aan den Rijn, Kluwer Law International, London; Ziller Jacques, "Le processus des ratifications du traité établissant une Constitution pour l'Europe et la période de

réflexion", EUI LAW working paper, 2006/29, available at http://cadmus.iue.it/dspace/handle/1814/6294; Reuchamps Min, 2007, 'Referendum as a Tool for Building European Identity. The Case of Belgium, Luxembourg, and The Netherlands', available at http://popups.ulg.ac.be/csp/document.php?id=91

[LXXX] Auer Andreas, 2007, 'National Referendums in the Process of European Integration: Time for Change' in Albi Anneli- Ziller Jacques (eds.), *The European Constitution cit*: 261-271; Tridimas George- Tridimas Takis, 2007, 'Electorates v Politicians: The 2005 French and Dutch Referendums on the EU Constitutional Treaty', in Albi Anneli- Ziller Jacques (eds.), *The European Constitution cit*: 273-285; Vollaard Hans, 2006, 'Protestantism and Euro-scepticism in the Netherlands', in *Perspectives on European Politics and Society*: 276 – 297; Shaw Jo, 2005, 'The Constitutional Treaty and the Question of Ratification: Unscrambling the consequences and identifying the paradoxes', in Xuereb Peter (ed) *The Constitution for Europe: An Evaluation?* European Documentation and Research Centre, University of Malta: 1-33; Wagner Markus, 2005, 'France and the Referendum on the EU Constitution', *European Policy Brief*, The Federal Trust, available at http://www.fedtrust.co.uk/admin/uploads/PolicyBrief8.pdf; Taggert Paul et al., 2005, 'The Politics of Bifurcation: The 2005 Referendums in France and the Netherlands', available at http://aei.pitt.edu/5746/ 2005; .Schwarzer Daniela, 2005, 'Lessons from the Failed Constitutional Referenda - The European Union Needs to be Politicized', SWP Comment 2005/25, available at http://www.swpberlin.org/en/produkte/swp_aktuell_detail.php?id=4760;G.Ricard-Nihoul-; Larhant Morgan, 2005, 'How to Explain the Unexpected: An Assessment of the French Constitutional Referendum', available at http://www.notre-europe.eu/uploads/tx_publication/Elcano-GRN-Referendum-2005_01.pdf; Deloy Corinne, 2005, 'Les Neerlandais rejettent massivement la Constitution Europeenne', available at http://constitution-europeenne.info/special/pays-bas_ref.pdf; Closa Carlos, 2004, 'Ratifying the EU Constitution: Referendums and their Implications', U.S.-Europe Analysis Series, Center on the United States and Europe, Washington, D.C., http://www.brookings.edu/articles/2004/11europe_closa.aspx; Closa Carlos, 2004, 'La ratificación de la Constitución de la UE: un campo de minas', available at http://www.realinstitutoelcano.org/analisis/548.asp; de Boisgrollier Nicolas, 2005, 'The French Political Landscape After the "Non"', available at http://www.brookings.edu/papers/2005/0601europe_boisgrollier.aspx; Aarts Kees- van der Kolk Henk, 2006, 'Understanding the Dutch "No": The Euro, the East, and the Elite', available at http://www.apsanet.org/content_30354.cfm;.Aldecoa Luzarraga Francisco, 'El proceso político en la laberíntica ratificación del Tratado Constitucional', available at http://www.realinstitutoelcano.org/documentos/238/238_Aldecoa.pdf 2006; Marthaler Sally, 2005, 'The French Referendum on Ratification of the Constitutional Treaty', available at http://www.sussex.ac.uk/sei/documents/epern_rb_france_2005.pdf; Moravcsik Andrew, 2006, 'What Can We Learn from the Collapse of the European Constitutional Project?', available at ttp://www.princeton.edu/~amoravcs/library/PVS04.pdf

[LXXXI]Tosato Gian Luigi- Greco Ettore, 2004, 'The EU Constitutional Treaty: How to Deal with the Ratification Bottleneck', in *International Spectator*: 7-24; Tosato Gian Luigi-Greco Ettore, '2005, The European Constitution: How to proceed if France or the Netherlands Vote "No"', available at http://www.epin.org/pdf/TosatoGrecoIAI250505.pdf; Leonard, Mark, 2005, 'Europe will survive a French Non, Foreign Policy', available at http://www.cer.org.uk/articles/leonard_foreignpolicy_20april05.html; Lippert Barbara- Goosmann Timo, 2006, 'The State of the Union: Period of Reflection or the Sound of Silence', available at http://www.realinstitutoelcano.org/analisis/924.asp 2006; Grant Charles, 2005, 'Europe beyond the referendums', CER Bulletin, available at http://www.cer.org.uk/articles/42_grant.html 2005;.Keohane Daniel, 2005, "Don't forget the Dutch referendum", CER briefing note, available at http://www.cer.org.uk/pdf/briefing_dutch_ref_may05.pdf; Keohane Daniel, 2005, 'A French Lesson for Europe? A guide to the referenda on the EU constitutional treaty', CER briefing note, available at http://www.cer.org.uk/pdf/briefing_keohane_referenda_april05.pdf; de Schoutheete Philippe, 2006, 'Scenarios for escaping the constitutional impasse', available at http://home.um.edu.mt/edrc/de_schoutheete_scenarios_for_escaping.pdf ;.Berezin Mable, 2006, 'Appropriating the "No": The French National Front, the Vote on the Constitution, and the "New" April 21', available at http://www.apsanet.org/content_30354.cfm.

[LXXXII]From a legal point of view, in fact, the ratification process continued thanks to the provisions of Art. IV-447 and the 30th Declaration . In fact, the Constitutional Treaty seemed to consider the option of some difficulties in the ratification: Art. IV-447- Ratification and entry into force "1. 1. *This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall*

be deposited with the Government of the Italian Republic. 2. 2. This Treaty shall enter into force on 1 November 2006, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step". Moreover the 30th Declaration on the ratification of the Treaty establishing a Constitution for Europe reads: "*The Conference notes that if, two years after the signature of the Treaty establishing a Constitution for Europe, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council*".

[LXXXIII]For a commentary see Ziller Jacques, 2008, *Il nuovo Trattato europeo*, Il Mulino, Bologna; Bassanini Franco- Tiberi Giulia (eds), 2008, *Le nuove istituzioni europee. Un commento al Trattato di Lisbona*, Il Mulino, Bologna; the special issue 1/2008 of the *Maastricht Journal of European and Comparative Law*; Mastronardi Francesco- Spanò Anna Monica, 2008, *Conoscere il Trattato di Lisbona*, Edizioni Simone, Napoli.

[LXXXIV]See Corthaut Tim, 2008, 'Plus ça change, plus c'est la même chose? A Comparison with the Constitutional Treaty', in *Maastricht Journal of European and Comparative Law*: 17-31,

[LXXXV]See f.e. Kiiver Philipp, 2008, 'The Treaty of Lisbon, the National Parliaments and the Principle of Subsidiarity', *Maastricht Journal of European and Comparative Law*: 77-83.

[LXXXVI] Corthaut Tim, 2008, 'Plus ça cit' : 34.

[LXXXVII] Ziller Jacques, 2008, *Il nuovo Trattato* cit.": 27 ff.

[LXXXVIII]*Ibidem*

[LXXXIX]*Ibidem*, 30.

[XC]Ziller Jacques, 2006, *La Nuova Costituzione europea*, 2nd edition, Il Mulino, Bologna.

[XCI]*Ibidem*,166.

[XCII]*Ibidem*, 193.

[XCIII]See the official statement here: http://ec.europa.eu/commission_barroso/president/pdf/statement_20080613.pdf

[XCIV]Doyle Peter, 2002 'Ireland and the Nice Treaty', 2002, available at http://www.zei.de/download/zei_dp/dp_c115_doyle.pdf

[XCV]Ziller Jacques, 2006, *Il nuovo cit.*,

[XCVI]Somek Alexander, 2007, 'Postconstitutional Treaty', in *German Law Journal*, 1121-1132.

[XCVII]*Ibidem*, 1126-1127.

[XCVIII]Besselink Leonard, 2008, 'The Notion and Nature of the European Constitution after the Reform Treaty', available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086189

[XCIX]*Ibidem*

[C]de Witte Bruno, 2002, 'The Closest Thing cit, 39-57.

[CI]Besselink Leonard, 2008, 'The Notion cit'

[CII]Volpe Giuseppe, 2000, *Il costituzionalismo del Novecento*, Laterza, Roma-Bari, 258.

[CIII]Carrozza Paolo, 2007, 'Constitutionalism's Post-Modern Opening', in Loughlin Martin - Walker Neil (eds.), *The Paradox of Constitutionalism. Constituent Power and Constitutional Form*, Oxford University Press, Oxford: 169-187, 176.

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