JCER

JOURNAL OF CONTEMPORARY EUROPEAN RESEARCH

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PUBLISHED BY:
UACES Student Forum & UACES

JCER

VOLUME 3 • ISSUE 2 • SEPTEMBER 2007

The EU-NATO Syndrome: Spotlight on Transatlantic Realities

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Abstract

This article examines the relations between the European Union (EU) and NATO in light of both of the current, deeply unhealthy, state of the transatlantic relationship, and of its ongoing evolution. The first part is devoted to a retrospective outline of the links between European defence and the Atlantic system, which highlights the major constant features of these last sixty years, as well as the rupture points. Then, various issues, from the problem of the division of labour and the definition of the chain of command to coordination on the ground and arms procurement, are evoked as concrete examples where the same fundamental question marks emerge, again and again; all of them revolving around the concept of sovereignty – that of the Europeans vis-à-vis America. It is suggested in the article that current European dependence does not allow but superficial and/or temporary 'progress' in EU-NATO relations, just as is the case in the broader Euro-American relationship. As long as Europeans will not assume fully the objective of autonomy (i.e. freedom of decision and action, with all the commitments it would imply), their subjection will continue to generate increasing tensions, since this inherent imbalance is not only detrimental to Europe's own interests, but it also excludes any reciprocity and prohibits any genuine partnership with the United States.

CONTRARY TO THE TWO DOMINANT, ALBEIT DIAMETRICALLY OPPOSED, TYPES of forecasts that were both highly fashionable a few years ago, it appears more and more clearly that the headaches related to the EU-NATO conundrum are here to stay. Those who, in view of the initial difficulties of establishing mutually acceptable relations between the two organizations, were talking about teething problems likely to be replaced, in due course, by a harmonious insertion of the new-born European Security and Defence Policy (ESDP) into the Atlantic system, were just as wrong as those who saw in it yet another occasion to toll the death knell of the North Atlantic Alliance. As it is, neither of the two scenarios seems close to becoming a reality any time soon.

The reason is very simple: transatlantic relations have arrived at a *stalemate point*. A crucial, though precarious, moment of balance, characterized by the fact that the United States is no longer able to prevent Europe from gradually moving towards more independence, while the Europeans are not yet ready to fully achieve their emancipation. In EU-NATO terms, this equation is reflected, on the one hand, by the US incapacity to block the launching of European defence within the frameworks of an organization of which they are not part (the EU), and on the other, the attachment of Europeans to the upholding of an organization (NATO) that institutionalizes their subjection to American pre-eminence in the security field.

This article proposes to focus on relations between the EU and NATO, by highlighting the political interests and strategic designs which determine progress or, most of the time, the blockages and pseudo-progress one can witness there. Indeed, two problems, closely related to one another, come out as the bottom-line from any analysis, whether it bears on the European integration or NATO, or *a fortiori* on the relations between the two. The first one is linked to the nature and general evolution of the transatlantic

ISSN 1815-347X online – Vincze, H. (2007) 'The EU-NATO Syndrome: Spotlight on Transatlantic Relations', *Journal of Contemporary European Research*, Vol. 3, No. 2, pp. 99-123.

relationship, the second to the modalities of various integration mechanisms. For the European countries, when it comes to their relations with the United States, these two problems appear in limpid terms: dependence *versus* autonomy, and integration *versus* sovereignty. The key aim of this article is to raise and to decipher these stakes such as they appear in the different fields (institutional contacts, cooperation on the ground, planning, capabilities, assigned missions and procurement) of the relationship between NATO and the EU. In order to better put the subject into its context, the first section is devoted to the relations between the Atlantic Alliance and European defence before the latter was taken charge of in the EU framework, notably with the launching of ESDP in June 1999. After the enumeration of the major issues around which all initiatives and debates are articulated as from this date, the article will finish with an outline of what could be deemed the only scenario which, on both a strategically realistic and democratically legitimate basis and under radically different conditions from those experimented until today, could guarantee a lasting preservation of the transatlantic partnership.

Brief survey of the past

By way of introduction, some defining elements in the historical context of the current EU-NATO relations will be underlined. However, before this is possible, it is important to make a clear distinction between structural continuities and the circumstantial variables. Seen under this angle, it is clear that neither the election (and re-election) of George W. Bush, nor the terrorist attacks of 11 September 2001, nor the war against Iraq, constitute a breaking point in transatlantic relations. Their impact is of another nature. These events did nothing but reinforce and/or accelerate major tendencies which had already been at work for a very long number of years. But especially, as a result of their broad mediatisation, they brought them into daylight, lifting the lid on the opaque universe of the taboos and 'non-dits' (things unvoiced and unspoken of) which has been, for decades, that of the interactions between Europe and America. Finally, as for the two moments which mark the only genuine ruptures in the transatlantic relationship throughout the last sixty years – namely the end of the bipolar era and the launching of a European defence policy within the frameworks of the EU – even at these times it proved to be impossible to completely neglect the weight of continuity. If the first fracture (end of the "cold war") spectacularly transformed the external and internal conditions of Euro-American relations, it was necessary to wait for ten years before the Europeans started, in particular with the launch of ESDP, to draw the first tentative conclusions.

Pre-history of EU-NATO relations

Since the end of the Second World War, each decade has seen at least one (failed) attempt from the European side of the Atlantic Alliance to develop a more or less distinct profile in security matters. For example, George Bidault and Ernest Bevin in vain pondered, in 1947, a Western Union in which 'Western Europe should be independent both of the United States and the Soviet Union' (Howorth and Keeler 2004: 6). The Six[1] in vain wanted to think about a so-called European Defence Community (*Communauté européenne de défense* or *CED*) in the 1950's,[2] and the Fouchet Plans of the 1960's proposed in vain an intergovernmental union with its own defence policy.[3] Similarly,

[1] The founding members of the European Coal and Steel Community (ECSC or *CECA*): France, Germany, Belgium, Luxemburg, Netherlands, Italy.
[2] *Treaty establishing the European Defence Community*, signed in Paris, on 27 May 1952, rejected by the French *National Assembly*, on 30 August 1954.
[3] Draft Treaty - Fouchet Plan I (2 November 1961) and Draft Treaty — Fouchet Plan II (18 January 1962).

those who had meanwhile become the Nine,[4] launched in vain their European Political Cooperation (EPC), with the idea that 'the close ties between the United States and Europe of the Nine do not conflict with the determination of the Nine to establish themselves as a distinct and original entity' (EC 1973).[5] Then in the 1980's, Europeans also in vain resuscitated the Western European Union, by stating that 'the construction of an integrated Europe will remain incomplete as long as it does not include security and defence' (WEU 1987). Before 1989, any aspiration of this kind was, from the start, condemned to fail. During the 'cold war' era, it was simply unthinkable to treat defence issues within a strictly European framework. Europe's subordination to American leadership was regarded as self-evident, and the rule was thus crystal-clear: when speaking about Europe, one cannot even think 'defence' and when speaking about defence, one cannot even think 'European'.

To illustrate this, one episode which arguably is the most frequently quoted and distorted, can be mentioned – the failure of the Treaty establishing the European Defence Community. This treaty which was rejected in 1954 by the French National Assembly is like a concentrate of the constraints which governed the relationship between 'European' defence and the Atlantic system throughout the bipolar period, at the same time as a precious display of the correlations between supranational integration and European dependence. To summarize these stakes, it is enough to recall the objection made by General de Gaulle, who fiercely opposed the treaty. To him, 'the CED consists in gathering European forces to collectively place them at the disposal of the United States'.[6]

Indeed, parallel to provisions of a supranational character applying to the Six (majority voting, common budget, training and armament programmes etc.), article 18 of the treaty stipulates that NATO's supreme commander (i.e. the commander-in-chief of the US armed forces in Europe) 'is entitled to make sure that the European defence forces are organized, equipped, trained and prepared in a satisfactory way'. For that, they 'receive technical directives' from the Atlantic Alliance. 'As soon as they are ready to be employed, they are assigned to the supreme commander' of NATO, who uses them to his own discretion, except when there is unanimous opposition of the Six (article 77) – and this in peacetime. In wartime, the US General automatically exerts 'the full powers and responsibilities of supreme commander'. It is not surprising that De Gaulle believed that 'this army called "European"', *à la* CED, would have been nothing else but 'one of the instruments of American strategy'. The mere fact that the CED project is still remembered and referred to as the pre-figuration of what could have been a 'European army' explains a lot about the confusions and/or manipulations around the label *European*.

Some constant features

According to Lawrence S. Kaplan (2004: 130-131) in transatlantic relations '"plus ça change, plus c'est la même chose" (the more things change, the more they stay the same)'. Kaplan goes on to suggest that 'almost from the inception of the alliance, Europeans have sought to get out from under American domination and chafed at their

[4] The six founding members, plus the United Kingdom, Denmark and Ireland, who entered the European Economic Community in 1973.
[5] It's worth noting a slight difference between the French and English versions of the text : in the French document, the ties between Europe and America "do not affect" the Europeans' determination to affirm themselves, whereas in the English version those same ties "do not conflict" with this European aspiration.
[6] De Gaulle's speech at the French National Assembly, 26 October 1950, available at: http://www.gaullisme.fr

inability to free themselves'. Actually, the various attempts at "emancipation" were condemned to fail, as far as they remained within the logic of an original paradox: Europeans hoped to build an independent profile in security and defence matters without touching anything in the transatlantic relationship, based on their dependence in this field and on the imbalance thus created. This leads us to elicit two persistent aspects of the last half-century of Euro-American relations, (1) a succession of psychodramas and (2) a structural American interest (as opposed to the circumstantial European one) perpetuating this situation of imbalance.

With regard to the constant tensions between the two sides of the Atlantic, the remarks of Harold Brown, President Carter's former Secretary of Defense, summarise rather appropriately the general ambiance: 'They tell me the Alliance is in disarray. When has it ever been in array?' (Heisbourg 1987). In terms of obvious disagreements between allies, we are, indeed, spoilt for choice. The crisis of Suez in 1956, the British trauma following the abandonment of the Skybolt project by the USA in 1962, the withdrawal of France from the integrated structures of NATO in 1966, the dissensions around the Vietnam war, the 'détente' policy vis-à-vis the Soviet Union, or president Reagan's 'Star Wars' initiative are but the tip of the iceberg (see Kaplan 2004; Hendrickson 2007). The crises, omnipresent, were overcome only because quite palpable interests worked in this direction. On the European side, these were, in the wake of the Second World War, objective interests, which have become, with time, subjective interests stemming from a mix of institutionalised de-responsibilisation, deeply anchored reflexes of subordination, and the lack of political will to free themselves from dependence links that are unworthy and prejudicial but, in the short run, often very comfortable.

On the US side, the approach is much more 'Cartesian'. Keeping the European continent under American control is a geo-strategic interest that largely transcends the circumstances of certain moments in time (see Layne 2006). It is, in addition, spiced up by the compensations Europeans agree to pay in exchange for what is customarily called the 'protective umbrella'. In these two respects, some official US documents speak for themselves. In 1992, the Pentagon's confidential *Defense Planning Guidance*, whose extracts were diffused in the press and stirred up a mini-storm among European allies, contended that America needs to 'discourage' the advanced industrial nations 'from challenging our leadership or seeking to overturn the established political and economic order', as well as to 'maintain the mechanisms for deterring potential competitors from even aspiring to a larger regional or global role' (Gellman 1992). One year after, the *Bottom-up Review* of the new Clinton administration explained how those who are thus kept under control are even expected to pay for being kept under control: 'Our allies must be sensitive to the linkages between a sustained U.S. commitment to their security on the one hand, and their actions in such areas as trade policy, technology transfer, and participation in multinational security operations on the other'.[7]

Proto-history of EU-NATO relations

Under these conditions, one understands more easily the importance of the rupture brought about by the collapse of the bipolar system, depriving US domination in Europe of its apparent justification or *raison d'être*. By the same token, one also understands more easily the nervousness of US officials at the time. The administrations of George H. Bush and William (Bill) Clinton ceaselessly repeated that Washington's European commitment went well beyond the Soviet threat, and that *the United States remains a European power.* Nonetheless, the circumstances of the exercise of this power had been changed, and irreversibly so.

[7] Report on the Bottom-up Review, Les Aspin, Secretary of Defense, October 1993.

With the end of the Cold War, one observes simultaneously an intensification of the inherent tensions of the transatlantic relations, and the disappearance of the massive external threat which was formerly essential to mask them and/or contain them at an acceptable level. The United States, suddenly finding itself to be the only one standing in the arena, was most of all concerned with perpetuating its position of force. On the other hand, Europeans, engaged for decades in a gradual process of integration in which it became more and more difficult to neglect security and geopolitical aspects, found themselves confronted with a sudden and spectacular extension of their theoretical margin of manoeuvre. This resulted in a structural opposition, which would be manifest above all in the heated controversies on the issue of European defence.

Consequently, 'as the United States perceived the increased momentum towards European agreement on a defence identity early in 1991, a number of alarm bells were rung by US officials' (Sloan 2000). In the long series of more or less muffled warnings, one should note 'a closely-held memorandum sent to European governments by Under-Secretary of State for International Security Affairs Reginald Bartholomew in February 1991', which 'according to published reports…expressed concern that the United States might be "marginalised" if greater European cohesion in defence led to the creation of an internal caucus within NATO'.[8] And, at this moment, there was only question of possible a European caucus *inside* NATO...

Be as it may, the new Treaty on European Union was a masterpiece of the so-called 'constructive' ambiguity.[9] It maintained European defence in uncertainty between a European and an Atlantic rationale, by establishing the bases of a 'common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence', but by taking care to define a double role for the WEU: 'the military arm' of the European Union was in the same time 'the European pillar' of the Atlantic Alliance. This floating of the WEU between the two institutions was meant to delay a delicate face-to-face with the most sensitive issues. In particular the one related to knowing whether European defence was going to be implemented within an autonomous European framework (EU) or in a logic of subordination, under American control and leadership (NATO). In order to tip the scales in favour of the second option, the United States was forced to give successive concessions. They had to bow to the idea of a European 'caucus' inside the Alliance, with the recognition of the ESDI, based on the principle of 'separable but not separate' European capacities (see Kaplan 2004: 109-128; Howorth 2000). However, as it turned out, it was but a short reprieve.

Apart from the structural determinants, three major factors were combined during the 1990's to lead the Europeans, largely despite themselves, in a European direction. The Balkan conflicts brought a clear demonstration, if ever needed, of the disadvantages of being at the mercy of a third party, even if it is a friend and ally. The AFSOUTH episode (American refusal to cede even one regional NATO command to a European) was revealing of American will to perpetuate their undivided control, and it confronted the Europeans, once again, to the realities of their *junior partner* status. Finally, the hasty and profound reorganisation of the US defence industry landscape added to all this the fear of a pure and simple absorption of the European defence technological and industrial base. It is not by chance that the new EU treaty, signed in 1997, finally started to outline

[8] Guicherd, C. (1991) 'A European Defense Identity: Challenge and Opportunity for NATO', *Congressional Research Service Report*, Washington, 12 June 1991, pp. 57-61. Referred to by Sloan (2000).

[9] Treaty on European Union, signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. See Official Journal C 191, 29 July 1992.

the path towards the solution.[10] It spoke about 'progressive' instead of an 'eventual framing of a defence policy' which, furthermore, 'will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments'. Even more importantly, it introduced the idea of the 'possibility of the integration of the WEU into the Union, should the European Council so decide'. To the general surprise, it was a thing done, hardly more than a month after the entry into force of the Amsterdam Treaty.

The rupture

The breakthrough occurred in December 1998, with the Franco-British agreement of Saint-Malo,[11] and was officialised within the framework of the Fifteen at the June 1999 summit of the EU Heads of State and Government.[12] Thanks to a spectacular British reversal (London lifted the veto which it opposed throughout the Amsterdam negotiations) the question of European defence would have, from now on, to be tackled on radically new bases. The former NATO dogma was to be replaced by an EU-NATO cohabitation. The WEU's relevant functions were to be integrated into the EU. The Alliance's dead-born ESDI had to cede the place to the EU's new security and defence policy (ESDP).

The importance of these changes can hardly be overestimated. In the words of Richard Hatfield, Policy Director at the UK Ministry of Defence, the removal of the British veto 'let the genie out of the bottle'.[13] This it did, despite the fact that, in the new constellation, the protagonists wanted to pursue their own respective agendas, which remained as antagonistic as before. For Great Britain, the key was to keep the Atlantic Alliance alive, notably with an improvement of European capabilities likely to interest the Americans, even if one needs, for this purpose, to accept that a European defence policy be launched within the EU. For France, on the other hand, it was a question of taking the first decisive step towards Europe's emancipation, even if this came with the price of making some necessary gestures designed to reassure Washington (see Howorth 2005).

The extent of the rupture was reflected in the delay the Americans took to fully realise what was happening. Officials and diplomats on the other side of the Atlantic persisted during months, sometimes even years, to confuse European security and defence "identity" and "policy" (see Albright and Cohen 2000). Given that the first one had been conceived within NATO in a logic of maintaining US control, and precisely in order to avoid the second being ever launched, the jury was out on whether the confusion was due to deliberate arrogance, wishful thinking or mere ignorance of developments on the old continent. Be as it may, certainly not everybody missed the point. As Peter W. Rodman (1999) observed as early as November 1999 at a congressional hearing:

> This EU effort to construct a separate European defense identity comes three years *after* NATO adapted its own procedures to recognize and promote a European Security and Defense Identity *within* the Alliance framework. The new EU procedure, in contrast (at least in some Europeans' minds), will enable Europe to dispense with the Americans, "if it wishes". That seems to be, indeed, its whole point.

[10] Treaty of Amsterdam amending the Treaty on European Union and the Treaties establishing the European Communities and related acts, signed on 2 October 1997, entered into force on 1 May 1999. See Official Journal C 340, 10 November 1997.
[11] Franco-British Summit Joint Declaration on European Defence, Saint-Malo, 4 December 1998.
[12] Presidency Conclusions, Cologne European Council 3 and 4 June 1999.
[13] Richard Hatfield, The Consequences of Saint-Malo, Public Lecture at IFRI, Paris, 28 April 2000. Quoted in Howorth (2000).

The future Assistant Secretary of Defense for International Security Affairs[14] could not have been more right.

Major issues

Instead of going through the period since the launching of the ESDP in a chronological order, this article adopts a thematic approach because the various subjects of controversy which, after 1999, had marked various moments of EU-NATO relations do still remain, in one way or another, a potential source of tensions. Indeed, none of the issues in question has found a lasting solution and so long as the fundamental conditions of the transatlantic relationship do not change, it is unlikely that a lasting solution will be found. Given the limitations of length, each area is to be presented very briefly, with the emphasis placed on the central contradictions governing its evolution.[15]

Main actors

Henry Kissinger's famous question 'If I want to find out what Europe thinks, whose telephone number do I call?' summarises perfectly the (slightly condescending) stereotype that sees the fundamental difference between America and Europe in the distinction between a unified and homogeneous US power, as opposed to European fragmentation. One should, however, nuance this truism. On the one hand, those who know Washington well also know that the rivalries, turf battles, blame games, and diverse pressures result in a complex and opaque universe, the study of which shows a strange familiarity with the Kremlinology of the Soviet era. On the other hand, the European fragmentation is not a deficiency *per se*. As Christopher Patten, former EU Commissioner for External Relations put it, 'What matters most is not whether there are several telephone numbers but whether there is a similar response or message from whoever is on the line' (Patten 2005: 159). It is on this point that one observes a marked difference between two sides of the Atlantic as soon as it comes to the essential questions related to the very foundations of the Euro-American *rapports de force*. Here, as a response to Washington's consequent line, followed with determination and steadiness for sixty years, the only European answer is the diametrically opposed visions of EU member states, most of them being unable to come to terms with the concept of power and/or that of autonomy.

From Washington's part, the most natural attitude vis-à-vis any ambition towards a genuine European independence is to oppose it. Obviously, it is much more comfortable to have, as allies, interlocutors with no real bargaining power and no real alternative. Hence the usual motto: the United States expects from Europe 'complementarity with, but not autonomy from, America' (Brzezinski 2004: 106). NATO remains one of the best instruments to achieve this, which explains the efforts deployed by Washington to preferably prevent, or at least to lay down strict conditions for, the launching of European defence (see Howorth 2007: 136-146). It was, indeed, the sense of Madelaine Albright's famous 3Ds criteria right after Saint-Malo: 'no decoupling, no duplication, no discrimination'. In other words, European decision-making should not be

[14] On July 12, 2001, the Senate confirmed Peter W. Rodman as Assistant Secretary of Defense for International Security Affairs.

[15] The particular issues dealt with under this chapter have been studied in detail by the author in *EU-NATO relations: between necessary cooperation, inherent competition and the inescapable change of paradigm* (manuscript for the book "Az Észak-atlanti Szerződés Szervezete a változás korában", SVKK, Budapest, 2005), available at www.hajnalka-vincze.com/Publications/119. Also, further readings with ample details on the subjects in question will be indicated in the footnotes as a substitute for developing the factual-chronological aspects in the present paper.

unhooked from a broader Alliance decision-making, ESDP should not duplicate resources and assets which already exist in the Alliance, and ESDP should not discriminate between European members of NATO according to their membership or not in the European Union. The three were, of course, in obvious opposition with the inherent logic of a European defence. The fact remains that the typical 'arguments' (i.e. accusations of anti-Americanism and friendly warnings against the waste of resources), regularly called upon to initially avert or, if it fails, to contain within precise boundaries any inclination towards European autonomy, are employed today to guide the evolution of ESDP towards a model as close as possible to the original 3Ds.

However, besides the politically unacceptable character, for Europe, of these US designs, America's behaviour with regard to the Alliance complicates day after day the task of those in Europe who oppose the idea of autonomy. Indeed, Washington's attachment to the preservation of NATO (as the instrument of US influence and control in Europe) is hardly coupled with actual American gestures attesting their commitment to this same NATO. Be it the (very) low level of US participation in NATO operations on the ground, the non-observance by America itself of NATO standards and norms, or the US preference for more flexible *ad hoc* coalitions, rather than the constraints of the Alliance, the result is the same outcry of despair in (Euro-)Atlanticist circles: 'Look, I am all for NATO, but if the Americans are not, what am I to do?'[16] In addition, the little sensitivity of the Bush administration to the well-established transatlantic face-saving games, has exposed even more clearly both the scale and the downsides of European subordination.

Not being able here to explore the details of the EU the Member States' individual attitudes,[17] only one recent conclusion drawn by Jolyon Howorth (2007: 160) is evoked:

> Almost all EU member states, whatever their initial point of departure in relation to the complex issue of relations between NATO and ESDP, tend recently to have shifted somewhat in their institutional preferences. The shifts mainly involve slight moves reflecting waning (but by no means expiring) enthusiasm for NATO and growing (but by no means overwhelming) enthusiasm for ESDP.

But, above all, it is to be stressed that these shifts are far from modifying the basic context, which is that of reluctance, or even outright hostility of the large majority of the EU Member States vis-à-vis the idea of a genuine emancipation of Europe. This internal opposition comes from naive pacifism and/or servile Atlanticism. Two equally irresponsible and ultimately fatal attitudes, both a testimony to the European elites' chronic inability to grasp the fact that (1) refusal of power leads to powerlessness and (2) refusal of independence leads to dependence. Powerlessness and dependence means no credibility, therefore no negotiating position whatsoever on any issue of significance, be it the course of world events, the development of the transatlantic dialogue or the mere defence of European interests (see Vincze 2006).

In practical terms, this fundamental intra-European division has several major consequences. Firstly, regarding the Alliance; the proponents of European autonomy need NATO, at least temporarily and even in its current asymmetrical shape, to ensure the mobilisation of the majority of the EU governments with regard to favouring the development of European assets. It is, in a sense, considered as a useful framework for an upgrade by stealth of European capabilities.

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[16] Dominique Moïsi quoted in Friedman (2002).

[17] On European approaches to the NATO-ESDP relationship, see Howorth (2007: 146-160). For a comparison of the two major – British and French – models, see also Part 3 (Highest stakes) of the present paper.

Secondly, with regard to ESDP; decision-making at 27, on the basis of the lowest common denominator inevitably leads to a diluted defence policy. Even though the project to set up a certain kind of European military capability is no longer in question, it is its very heart which, for the time being, is lacking (nuclear deterrence, explicit mandate for territorial defence, military space policy and related common programmes), and its essential conclusions which still remain to be drawn (for instance, making the safeguarding of the European technological and industrial base a political obligation, via the institution of a 'European preference').

Thirdly, on the course of European integration in general; in these circumstances, practically each 'step ahead' in the integration of the 27 is like an additional fastener on a straitjacket. Without a radical change of direction, based namely on a general awakening to the notion of sovereignty and the stakes involved, any push towards 'communautarization' would do nothing but lock Europe even more in a definitive position of dependence. As for the solution, it has been floated for ages. According to the new French Minister of Defence, 'European defence cannot be realized with twenty-seven countries. It will be constituted on the basis of a core group of states manifesting the will to embark on this process, and we will find in this core the countries engaged in the European construction for the longest period of time'.[18]

Hierarchy and division of labour

One of the most heated debates of EU-NATO relations has been articulated, from the very beginning, around the concept of non-decoupling, which, in the US reading, should mean that NATO decides first to respond or not to a particular crisis situation. Whereas some Europeans would not find *a priori* anything wrong with such a formal sequencing, for others it is politically unacceptable, insofar as it would enclose European defence in a subcontractor role. The controversies revolve around the established formula used in ESDP documents: 'where NATO as a whole is not engaged'. In reality, however useful they were in order to overcome initial opposition, these few words will always remain subject to divergent interpretations. As a NATO Assembly report noted in 2005: 'The US takes the view that [this formula] gives NATO the first right to consider a military operation. The EU could undertake operations only after 'NATO as a whole' has decided not to be engaged. The EU, on the other hand, has not recognised that right for NATO' (Minniti 2005).

These 'misunderstandings' were most manifest during the discussions, in 2005, on how to respond to the African Union's request for help in Darfur, when the US administration 'argued that NATO should take the lead and the EU should stay out' (Keohane 2006). In the end, the two organisations ended up conducting two parallel operations. But already at the first EU-only military mission (Operation Artemis in the Democratic Republic of the Congo, in June 2003), the thorny issue of hierarchy gave rise to diverging accounts: 'EU statements assert that NATO was regularly 'informed' of EU intentions in Bunia. NATO officials counter that 'informing' them *after the fact* does not equal "consultations"' (Michel 2004: 91). Lord Robertson, for his part, preferred to underline that 'NATO did not want to participate…'.[19]

Be as it may, not only does the problem remain unsolved (the EU Parliament's recent note on EU-NATO relations talks of 'lingering controversy' over the question of 'sequencing' (Cornish 2006: 11-12), but it is even bound to take on new forms. For

[18] Hearing of French Defence Minister Hervé Morin before the National Assembly's National Defence and Armed Forces Committee, 4 July 2007. On linkages between European sovereignty and multiple-circle integration scenarios, see Vincze (2006b).
[19] *NATO Notes*, vol. 5 (6), 6 June 2003, Center for European Security and Disarmament.

instance, it remains unclear which organisation would have priority in using double-hatted forces (designated both for the EU and NATO) to address an emerging security challenge. In any case, the official texts do not explicitly codify any kind of sequencing or hierarchy between NATO and the EU. As France is always keen to point out, neither to NATO's nor to the EU's advantage, EU-NATO cooperation is 'fully respecting each organization's decision-making autonomy. So there is no right of first denial, on either side'.[20]

The issue of hierarchy is closely linked to that of the so-called division of labour. An allegedly clear picture of this latter is reflected in early EU documents, such as the landmark Cologne Presidency Conclusions that see NATO as 'the foundation of the collective defence of its members' and the EU concentrating on Petersberg-type crisis management tasks.[21] However, there are, and have been from the outset, several problems with this tempting but overly simplistic idea. On the EU side, apart from the fact that the higher end of the Petersberg missions is a grey area, responsibility for collective defence, in some form or another, is less and less easy to be kept away from ESDP.[22] On NATO's side the collective defence guarantee has never been a very convincing one. US refusal to commit to anything resembling an automatic defence of European allies led to a carefully crafted text in the Washington Treaty, in which the famous *pledge* (Article 5) leaves individual member states free to fashion their response to an attack according to their respective national interests (Kaplan 2004: 2-5).

Characteristically, Article 5 tends to be deformed nowadays into an argument for raising European troops to shoulder US forces engaged in external operations, and lifting the national caveats placed on their use under US/NATO command. This shift in the interpretation of 'solidarity' is in line with the general evolution of the Alliance, depicted by Howorth (2003: 15) as 'an organisation which is transforming itself from one whose original purpose was to deliver US engagement in the cause of European security into one whose new purpose is to deliver European engagement in the cause of US global strategy'.

That is how, right from the beginning of the 1990's, NATO turned to crisis management missions, complying with the famous US warning 'out of area or out of business'. Today, a new direction has been fixed (by the Americans, of course). It is time to break out of the yoke imposed by the basically military nature of the Alliance and head, without further delay, towards civilian dimensions. Namely the ones they pick and choose as being of particular interest. NATO's Secretary General was rather clear in this respect: 'In the age of globalisation, virtually any societal problem can quickly escalate into a security challenge. So it is hardly surprising that pundits are constantly calling on NATO to go global, and add every new emerging challenge to its already crowded agenda. In some cases they are right'.[23]

Parallel to the multiplication and expansion of the overlaps between NATO and EU competence areas, numerous ideas were put forward to delineate the two organisations, on either a functional or geographical basis. Whereas the proposals to establish some

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[20] *Guide to the European Security and Defence Policy (ESDP)*, Permanent Representation of France to the European Union, November 2006, p.12.

[21] Following the WEU's Petersberg Declaration of June 1992, these are described in Article 17.2 of the current EU Treaty as "humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking".

[22] As seen during the negotiations of the so-called constitutional treaty, or most lately in Article 27.7 of the Draft Treaty amending the Treaty on European Union and the Treaty establishing the European Community.

[23] Keynote speech by NATO Secretary General Jaap de Hoop Scheffer at the Riga Summit, 28 November 2006.

kind of 'division of the world' between the EU (in charge of Africa for example) and NATO (more interested in Asia) are of a doubtful connotation and had but very little resonance, those that would give the 'high-end' missions to NATO and the 'low-end' (in the mud) operations to the EU seem (slightly) more popular, but just as unrealistic.

First, such codification of the respective tasks is unacceptable from the European point of view. It is, for one thing, reminiscent of a long-standing unease within the Alliance over the distribution of roles between US and European forces. As the historian Kaplan (2004: 6) explains, already during the development of the first strategic concept, in 1949, 'the allies were discomfited by the recognition that they would serve as cannon fodder in the event of a Soviet attack. American airmen in the skies above the battle would be less subject to casualties than the European troops on the ground below. Echoes of dissent over this division of military labor could be found a half century later in Kosovo and Afghanistan'. Also, attempts to define a clear functional division of NATO and EU missions hide, in a not very subtle way, the willingness to confine ESDP to civilian crisis management (especially policing and reconstruction) tasks. This could be construed as somewhat absurd knowing that for General Sir Rupert Smith (former Deputy SACEUR) for instance, 'Europe is the best weapon to win both war and peace' (Smith 2005).

Even more importantly, any formal division of labour is unimaginable for the simple reason that both organisations are determined not to give up any competence segment. No wonder that NATO's Deputy Assistant Secretary General disagrees openly with those who 'say the best way to avoid any clashes or competition between NATO and the EU would be sort of to divide up the world into zones', and thinks that 'there is nothing to stop either organization being involved anywhere in the world, so we should not have artificial geographic divisions'. To those who 'say there should be a functional division of labour, that NATO would do the hard security missions and the EU the soft security missions', Mr. Shea's answer is that 'we shouldn't try to sort of put organizations into compartments'.[24] Indeed, it is more than clear that both organisations are adamant on keeping all options open, and hence consider any formal division of labour politically unacceptable.

Forums of consultation

Usually, commentators like to note that with 32 countries being represented altogether in the 26-member NATO and the 27-member European Union, relations between the two organisations are to a large extent, relations between the same set of countries. If it is to highlight the alleged nonsense of the difficulties in inter-institutional dialogue, the remark can be misleading, insofar as it is precisely this remaining 'small' difference between the two membership lists that explains the scope of the difficulties. Difficulties that, at first glance, seem to be of a technical nature and related to the non-EU member NATO country Turkey (see Howorth 2007: 167-170), but which are but a disguise for the real difficulties, this time of a politico-strategic character and linked to the relationship between Europe and America.

As from the starting point of 1999, it is the United States who had established the requirement of non-discrimination against European members of NATO outside the EU, as part of the 3D-conditionality for ESDP. Encouraged by this US support, Ankara (and with it, although in a less vehement way, the other European non-EU NATO members) insisted, taking pretext of their Alliance membership, on exerting a considerable influence in the new decision-making structures of ESDP. Behind this, the real question was, once again, that of the NATO's primacy and the EU's subordination to it. However,

[24] Video lecture by Jamie Shea, Deputy Assistant Secretary General for External Relations, 12 February 2004.

whereas the disputes delayed the launching of the operational phase of European defence (suspended, for political reasons, to an EU-NATO agreement alternately blocked by Turkey and Greece), at the same time they highlighted the potential for serious blackmail, and thus paradoxically provided an incentive to the EU to move towards autonomy from NATO.

Today, after the EU enlargement in 2004, the roles are in a sense reversed, since the problems are linked now to non-NATO member EU countries. But the basic conundrum remains the same. On the surface, we find again a Turkish veto: Ankara refuses to allow sensitive information to be exchanged with the EU as a whole, and Cyprus and Malta in particular, at joint meetings (they being neither members of the Alliance, nor participants in Partnership for Peace which would allow some intelligence sharing). For its part, Cyprus, adamant on preserving its status as an equal member of the EU, has prevented the rest of the EU from engaging in broader discussions with NATO. This technical stumbling block (which is, of course, alimented by Turkish grievances vis-à-vis a not-so-welcoming EU and the unresolved status of the Cyprus issue) created a stalemate. The agenda of formal meetings between the two institutions are limited to issues relating to 'Berlin Plus' operations (those being carried out by the EU with recourse to NATO assets), with non-participating Cyprus and Malta being subsequently informed. As a result, though formal EU-NATO meetings are held at various levels, their agenda is as narrow as possible, and though informal meetings have been set up to circumvent the formal constraints, these are without an official agenda and without any information to parliaments (see Hofmann and Reynolds 2007; Shimkus 2007).

Rather tellingly, the EU and NATO paint two very different pictures on the state of their relationship. EU Presidency reports on ESDP give a factual, overall positive assessment of cooperation between the two organisations, whereas NATO officials have been incessantly calling publicly for a deeper and extended dialogue with the EU suggesting that the problem runs much deeper than the sole Turkey issue. In fact, however serious the political motivations are behind Ankara's technical objections, they are nowhere near to the structural-strategic considerations for which the Cyprus deadlock is a mere smokescreen. As Norway's NATO delegation put it: 'some EU member states prefer to limit cooperation in order to preserve the EU's character and decision making autonomy and to fend off US influence on European policy'.[25]

In the words of Jaap de Hoop Scheffer, 'some deliberately want to keep NATO and the EU at a distance from one another. For this school of thought, a closer relationship between NATO and the EU means excessive influence for the USA. Perhaps they are afraid that the ESDP is still and too new and vulnerable for a partnership with NATO'.[26] Notwithstanding the last remark, with its strange ambiance of a kindergarten beauty contest, concerns about undue American influence are, indeed, at the heart of the matter. But when 'French officials sometimes say that close EU-NATO relations could lead to the US gaining excessive influence over EU foreign and defence policy' or that 'the US may use NATO missions as a means for getting European troops to serve American strategic interests', even the UK based Centre for European Reform has to conclude that these 'French fears about US priorities are not completely unfounded' (Keohane 2006: 2).

If Paris is wary of discussing far-reaching policy issues within US-dominated NATO, Washington is no less cautious about dealing with its European allies outside this thoroughly controlled framework. No wonder that another venue for transatlantic get-

[25] *Norway's perspective on NATO-EU cooperation*, Norway's Permanent Delegation to NATO, January 2007.
[26] *NATO and the EU: Time for a New Chapter*, Keynote speech by NATO Secretary General, Jaap de Hoop Scheffer in Berlin, 29 January 2007.

togethers, namely the official EU-US summits have so far touched only timidly on security issues. As noted in a Congressional Research Service Report, 'US officials are concerned that a wide-ranging or formal strategic dialogue with the EU could ultimately erode NATO, where the United States has not only a voice but also a vote' (Archick 2005: 3). And not only 'a vote'; as the editor of the *Atlantic Monthly* put it: 'NATO is ours to lead, unlike the increasingly powerful European Union' (Kaplan, R.D. 2005). By the same token, he pointed out the fundamental constraint in EU-NATO relations: 'Let me be even clearer about something that policymakers and experts often don't want to be clear about. NATO and an autonomous European defense force cannot both prosper' (Kaplan, R.D. 2005). Indeed, NATO as the instrument of US control over Europe is, by definition, incompatible with European autonomy.

Headquarters and command

One of the focal points of US concerns has been to torpedo any attempt at establishing a European military Headquarters and an all-EU chain of command (Larrabee 2004: 59). In fact, due to 'skilful British negotiation in the early days of ESDP, when a compromise was forged that left a specific gap in the chain of command for EU-led military operations and linked their planning to NATO capabilities' (Goerens 2006), the mandate of the EU Military Staff was restricted, from the outset, to strategic planning.[27] Consequently, there is no complete and permanent European chain of command, and no capacity to plan an operation without having recourse to NATO's planning capabilities or a national Headquarters. However, this shortcoming is merely the result of a political choice, and as such has never been set in stone.

Indeed, the so-called 'Chocolate Summit' in April 2003 between French, German, Belgian and Luxembourg leaders put the idea forward in an open and allegedly provocative way. As their joint declaration stated, 'we propose to our partners the creation of a nucleus collective capability for planning and conducting operations for the European Union'.[28] The initiative met with massive hostility (at best the timing, one month after the start of the US invasion of Iraq, was generally considered most unfortunate, at worst it fuelled already virulent Francophobia in some Atlanticist circles), and, as usual, was consensually dismissed as a spectacular failure. For a failure, it was certainly one that its initiators would gladly repeat any time. In fact, by the end of the same year the long-awaited breakthrough had been achieved at the all-EU level. The document *European Defence: NATO/EU Consultation, Planning and Operations*, adopted by the European Council in December 2003, created the basis for an EU CivMil Cell, which might become, one day, a genuine EU Headquarters. Of course, it did this in an extremely cautious way, by sugar-coating the controversial measure with the simultaneous establishment of an EU cell at SHAPE and the invitation of a NATO liaison team at the EU Military Staff (to facilitate the conduct of Berlin Plus operations), and by specifying that for the conduct of autonomous EU military operations the first option remains the use of national HQs multi-nationalised for the occasion. But there is, definitely, a possibility of a collective European capacity, even if it is to be called upon especially when no national HQ is identified, and when a joint civilian/military response is required. In those cases the EU CivMil Cell would 'have responsibility for generating the capacity to plan and run the operation' not from a standing HQ but from an Operations Centre rapidly set up on a case-by-case basis.[29]

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[27] Council Decision of 22 January 2001 on the establishment of the Military Staff of the European Union (2001/80/CFSP).

[28] Meeting of the Heads of State and Government of Germany, France, Luxembourg and Belgium on European defence – Joint declaration, Brussels, 29 April 2003 ("Tervuren Declaration").

[29] For a description of the EU OpsCenter history, concept and implementation, see Stephen Pullinger (2006).

In view of the number of precautions taken, most commentaries anticipated a civilian profile for the new structure: 'perhaps the real added value of the Cell's OpCen would be for it to be operationalised to oversee and manage civilian crisis management operations whilst military operations appear most likely to draw upon NATO's assets and capability under Berlin Plus arrangements or, in the case of autonomous EU operations, upon the five identified national HQs' (Pullinger 2006: 18).[30] However, it is not what the entire logic of the Cell's establishment was about. In fact, the first OpsCenter activation occurred through the EU's second specifically *military* exercise (MILEX 07, from 7 to 15 June 2007) (EU 2007: 5). Furthermore, the recent agreement on a new chain of command for civilian ESDP operations, with the establishment of a Civilian Planning and Conduct Capacity (CPCC) (EU 2007: 6) might also indicate that the OpsCenter is unlikely to be confined to a solely civilian crisis management role.

Of course, these developments are not met with universal acclaim. It is not a coincidence that new counter-propositions are emerging, such as calls for NATO-EU joint planning. This new ingenious approach aims to strip the Union's OpsCenter of much of its substance, while harnessing, to NATO's benefit, the EU Commission's long-coveted civilian resources in an oblique way. According to the director of the Transatlantic Relations Program at ACUS (Atlantic Council of the United States), the EU liaison cell at SHAPE and the NATO team at the EU Military Staff 'instead of serving merely as liaisons' should 'become the beginning of a modest planning staff', which 'should also include representatives from the European Commission, so that the Commission's considerable expertise and resources devoted to reconstruction and development can be included in this effort' (Burwell 2006: 94-97).

Berlin Plus and operations

Today the scenario in which the EU conducts an operation with recourse to NATO assets is implemented on the basis of the so-called Berlin Plus arrangements.[31] Their origins go back to the 1996 NATO Ministerial in Berlin, where foreign ministers agreed to make NATO assets available for EU-led operations. At the 1999 Washington Summit this provision was extended for EU-led crisis management operations under ESDP, but it was not before December 2002 that the modalities were approved in a political document called *NATO-EU Declaration on ESDP*.

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[30] The five pre-identified national HQs are those in France (Mont Valérien), Germany (Potsdam), the UK (Northwood), Greece (Larissa) and Italy (Rome).

[31] According to the Alliance's fact sheet: the "Berlin Plus" arrangements adopted on 17 March 2003 following the political decision of December 2002, provide the basis for NATO-EU cooperation in crisis management by allowing EU access to NATO's collective assets and capabilities for EU-led operations. They consist of the following major elements: a NATO-EU Security Agreement (covers the exchange of classified information under reciprocal security protection rules); assured EU access to NATO's planning capabilities for actual use in the military planning of EU-led crisis management operations; presumed availability of NATO capabilities and common assets, such as communication units and headquarters for EU-led crisis management operations; procedures for release, monitoring, return and recall of NATO assets and capabilities; terms of reference for NATO's Deputy SACEUR - who in principle will be the operation commander of an EU-led operation under the "Berlin Plus" arrangements (and who is always a European) - and European command options for NATO; NATO-EU consultation arrangements in the context of an EU-led crisis management operation making use of NATO assets and capabilities; incorporation within NATO's long-established defence planning system, of the military needs and capabilities that may be required for EU-led military operations, thereby ensuring the availability of well-equipped forces trained for either NATO-led or EU-led operations. (see http://www.nato.int/issues/nato-eu/evolution.html)

Of course, these agreements do not resolve all questions, far from it. For a start, the Berlin Plus package has never been made public or transmitted to the national parliaments for ratification. Even more significantly, the so-called guaranteed access is, by its nature, hypothetical and as such, subject to the particular situation and the political will. For Kori Schake, professor at the US Military Academy at West Point and former director on the National Security Council, '[a] real assurance of availability would mean that the EU's crisis-management priorities would take precedence over the other global responsibilities and interests of the United States. Assured access is a faulty premise even for some NATO operations, much less for those in which the Unites States is not directly involved' (Schake 2003: 117).[32]

Nonetheless, according to the usual formula reiterated in the EU Presidency reports on ESDP: operational 'EU-NATO co-operation in the context of the 'Berlin Plus' arrangements has continued to work smoothly and efficiently'. The sentence refers to EU operations in the Balkans, which so far constitute the textbook cases of Berlin Plus implementation (Masson 2006), namely Operation Concordia in Macedonia taking over NATO's Allied Harmony mission in March 2003 (Vincze 2003) and Operation Althea launched in December 2004 to replace NATO's SFOR in Bosnia-Herzegovina (EU 2007: 16-17). Despite official praises of an exemplary cooperation between the two organizations, frictions and hurdles were actually not uncommon before, during and after the launch phase of these operations. As noted in the NATO Parliamentary Assembly's latest report, 'on-the-ground achievements were not as institutionally seamless as might have been thought. Indeed, the success of the handover evidently depended heavily on the commanders on the ground from both organizations, who were forced to de-conflict what evidently were sometimes unclear and overlapping mandates' (Shimkus 2007).

Moreover, new operational configurations may put Berlin Plus under increasing pressure. After the already mentioned Darfur dispute (Monaco and Gourlay 2005: 3-5), the recently launched civilian EU mission in Afghanistan (EU 2007: 10-12) and the planned operation in Kosovo (EU 2007: 12-14) might put EU-NATO arrangements to the test again, for various reasons. There are, in fact, reports on proposals within the Alliance to opt for the Berlin Plus scenario even in situations where both organisations are deployed in the same theatre but conducting different operations, such as it is and might be the case in Afghanistan and Kosovo. This view, strongly voiced by Turkey, is 'based on the claim that since NATO clears the theatre for an EU police mission to enter, the EU ultimately relies on NATO assets and capabilities' (Hofmann and Reynolds 2007: 6). Kosovo could also create another precedent – as signs of US interest in participating in a prospective ESDP civilian mission are growing stronger. Washington would certainly be very attentive to the security needs of American personnel, and might be tempted to use it as a pretext to define/re-define the respective authorities of the two organisations in favour of reinforcing NATO oversight.

Capabilities and armaments

Just like in any other dimension of EU-NATO relations, in the capabilities field too, debates and actual developments revolve around the issue of European autonomy. As George W. Bush's former director on the National Security Council observed; 'Without having genuinely autonomous military forces, Europe's needs are subordinated to US priorities. The EU is left hostage to the concerns and potential veto of the United States…' (Schake 2003 : 130). At the level of the units, it is above all the famous issue of

[32] During President George W. Bush's first term, Schake was the director for Defense Strategy and Requirements on the National Security Council. She is at present a research fellow at the Hoover Institution.

hierarchy and sequencing that re-emerges, while at the level of equipment, it is the American postulate of non-duplication which is in question. To sort out these thorny issues, the NATO-EU Capability Group, which met for the first time in May 2003, is expected to achieve consistency between the European Capability Action Plan (ECAP)/Capability Development Mechanism (CDM) and NATO's Prague Capability Commitment (PCC), as well as between the NRF (NATO Response Force) and the EU Battlegroups. In fact, at present a coordinated rotational schedule makes sure that no member's units will be serving in both forces simultaneously. It remains, however, unclear which organisation would have priority in using the forces designated for both of them or whether the current de-confliction will hold for airlift and other enabling capabilities; let alone the problem of 'cream-skimming' (concern that NATO will cream off the best forces for its own use, leaving the ESDP with second-rate capacity), or that of the NRF's still vague role and functions.

In any case, the new NATO force is unanimously regarded as 'the catalyst for transformation', a capability modernisation process carried out under the direction and control of ACT (Allied Command Transformation – one of NATO's two strategic commands, the other one being responsible for operations). This is a process based on a paradigm with, so to speak, a strong American inspiration. Located at Norfolk (in Virginia), ACT is in the immediate vicinity of the US Joint Forces Command facilities, which undoubtedly is a practical solution, given that the Supreme Allied Commander of ACT is at the same time the Commander of United States Joint Forces Command (USJFCOM).

As for the 'equipment' part of the capability development problem, whereas European insufficiencies in certain key areas are hardly in doubt, the question to be asked when procuring defence material (besides the technical specifications in the definition of which it would be preferable to have a say) is to know from where it comes and who is in control. The issue of control of the availability of the material is closely related to that of sharing of sovereignty. The project to pool 3 or 4 Boeing C-17 between 15 Member States of NATO (neither France, nor Germany, nor Great Britain are part of it) is illustrative of the integrationist approach. Resistances to it come primarily from two sources.

First, the *big* countries (those who up to now took care to preserve, to various degrees, the range of capabilities necessary to their autonomy of decision-making and action) prefer to keep control over their assets. In addition, among the *small* states, naturally more attracted to common solutions, there are some (i.e. Belgium) who say that once it comes to sharing sovereignty, it is better be within a European framework. Indeed, since most European States are also NATO members, the capabilities they jointly acquire reinforce the Alliance automatically. In particular, the chances to keep (a share of) real control are incomparably less in an Alliance *de facto* dominated by the Americans than in a Europe where power relations are more balanced, regulated and institutionalised, and strategic interests and preferences are somewhat closer to each other.

The origin of the equipment matters above all with regard to the security of supply, and the potential of pressure and blackmail which it may imply. At this point, it might not be completely uninteresting to recall that, in NATO, the Assistant Secretary General for Defence Investment has always been a US national. It is not a coincidence that, as we have seen, one of the motivations behind the launching of ESDP was the safeguarding of the European defence industrial and technological base. Similarly, 'US fears, immediately after Saint-Malo, focused on the EU's potential to rival the USA in military hardware. This fear was not unconnected with the other ambition expressed in the Saint-Malo Declaration: "a strong and competitive European defence industry and technology"' (Howorth 2007: 139).

Traditionally, European purchases of US armament occur on the basis of a 'two-way street' philosophy. Already in the years 1960-1970, 'the principal American arguments in this debate concerned the reductions of costs linked to a limitation of duplications within the arms production for NATO, and the military advantages of a standardisation of materials; but the underlying reasoning has always been related to cost sharing and a compensation for US military expenditure in Europe' (Ellner 2004: 126). In fact, Washington wanted to achieve a 'more equitable sharing of costs', and the proposed remedies involved, among other things, greater purchases of US military equipment. (Kaplan 2004: 51-52). The danger, for Europe, has always been to see her autonomy undermined at its very foundation, at the level of technology, armament production and control over their most elementary or sensitive defence capabilities. The British model is indicative of the risks, as Tony Edwards, former Head of UK Defence Exports (1998-2002) pointed it out: 'The UK maintains its capability to project power by an extraordinary reliance on the US for technology, equipment, support and intelligence'.[33]

In Washington, European efforts to preserve and shape autonomous capabilities are denounced as anti-Americanism and 'disparaged as a waste of funds, when US capabilities could be relied on or purchased' (Adams *et al.* 2004: 154). According to an academic report (Adams *et al.* 2004: 116-117) carried out under the aegis of the Center for Technology and National Security Policy of the US National Defense University, today 'Europeans have three options for arming national or cross-national forces with modern defense technology'. They can acquire advanced technology from the United States, or develop defence systems and technologies on a transatlantic basis, but in these cases they have to be aware of the detrimental consequences of buying American for the European industrial and technology base. 'Third, the Europeans could strengthen their own defense industrial and technology base, both to supply their own defense technology independently of the United States, and to provide partnership and competition with US companies. There has been considerable and growing support in Europe for this third option over the past decade. (…) The decision to create the EDA may represent a critical breakthrough in this process' (Adams *et al.* 2004: 116-117).

In fact, the role of the European Defence Agency cannot be taken for granted in this respect and will depend on the policy pursued by its 26 participating states (all EU countries, except Denmark).[34] In particular on their readiness to acknowledge the necessity of a specifically European approach to the armaments issue (see Vincze 2006c, 2006d). Back in 2004, Nick Witney, head of the European Defence Agency (EDA) said that the EDA plans 'should eventually include a buy-European preference' (Tigner 2005). In December 2006, the director of EDA's Industry & Market Directorate, observed that a common European vision should involve, inter alia, 'less dependence on non-European sources of supply'. He is right. He is also right to note, about the stakes involved, that 'at root, it is to do with independence, sovereignty and autonomy' (Hammarström 2006: 11).

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[33] Contribution on the Commission's Green paper by Tony Edwards, quoted in The European defence equipment market: Article 296 of the Treaty establishing the European Community and the European Commission's Green Paper, report submitted by Franco Danieli, at the Assembly of the Western European Union, 6 December 2005. Tony Edwards is former Head of the UK's Defence Export Services Organisation (1998-2002), Visiting Professor at The Royal Military College of Science and has retired recently as Chairman of The Air League.

[34] The European Defence Agency was established under a Joint Action of the Council of Ministers on 12 July, 2004, "to support the Member States and the Council in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy as it stands now and develops in the future". One of its ascribed functions is to create a competitive European Defence Equipment Market and strengthen the European Defence, Technological and Industrial Base.

Highest stakes

Behind the imbroglio of EU-NATO relations, and at the heart of what is traditionally called the transatlantic *misunderstandings*, one finds a systemic tension between the two sides of the Atlantic; on the one side, an American ambition aiming at a total and overall control (a mixture of the traditional quest for 'absolute security' (Chace and Carr 1988) and the, by the way completely natural, desire to maximize and perpetuate their acquired positions and advantages) and, on the other hand, Europe's fundamental interest (more or less assumed, depending on the actors, the issues and the moments) to preserve or, if necessary, to acquire freedom of decision and action. According to John Van Oudenaren (2003), director of the European section of the US Congress Library, America is today the classical 'status quo' power of the international system, while Europe is the most revisionist of all the actors on the world stage. The first strives to sustain its hegemonic position, while the second constitutes, insofar as it assumes an (increasingly more) autonomous existence, an undeniable challenge to America's dominance.

As we have seen through the particular subjects, this power struggle is articulated around a fundamental alternative which appears mainly on two plans. Firstly, that of integration ('pooling' under the aegis of the Atlantic system or safeguarding of the national margins of manoeuvre), and (2) that of autonomy (reinforcement or reduction of European dependence). The arguments for the (Euro-)Atlanticist option (pooling within the Atlantic structures, locking Europe in a situation of dependence) are the same in both cases; it seems enough to invoke the miracle words of 'efficiency' and 'pragmatism', to justify short-sighted and fundamentally irresponsible choices. All the more irresponsible, is that the victims of this first scenario would also be the same – Europe's sovereignty and, with it, the very possibility of a transatlantic relationship based on genuine partnership.

Integration

Integration within the NATO system raises some important questions that have not changed since the time when France had put them forward to justify her withdrawal from the integrated military structures. First of all, there is a substantial distinction to be made between the Atlantic Alliance, brought into being by the 1949 Washington Treaty and the integrated military structures created later within its framework, i.e. the North Atlantic Treaty Organisation (NATO). For example, although they remained members of the Alliance, Greece (1974-1980), Spain (1986-1997) and France (from 1966) were not part of the integrated military structures. According to the French Foreign Minister's speech in 1966; 'One is in no way the condition for the other, even if, in current terminology, and through an ambiguity perhaps intentionally maintained, the term "NATO" covers both the Alliance and the Organization'. The latter is essentially 'a whole group of integrated international commands, placed unavoidably under the authority of the strongest, by far, of all the partners'.[35]

The French objections at the time against the integrated NATO system were of three types, relating in particular to its anachronism, the de-responsibilisation which it entails

[35] Maurice Couve de Murville, French foreign minister, speech to the French National Assembly, April 14, 1966. The distinction is well reflected even in the title of one of the "recommended books" on NATO's homepage, notably "*L'Alliance atlantique et l'OTAN, 1949-1999 : un demi-siècle de succès* (dir. Pierre Pascallon), Bruxelles, Bruylant, 1999". See www.nato.int/issues/faq/index.html. The present article follows the – erroneous but established – practice of using the two terms as if they were interchangeable, except on those instances when the distinction is most directly relevant to the issue being treated.

and the fact that it undermines sovereignty. Already by 1966, the circumstances had radically changed compared to the years when Europe was in ruins and the United States the one single power with an atomic bomb. The countries of Western Europe had recovered to the point of becoming America's trade competitors. The Soviet Union, having entered what would become the nuclear club, was able to strike the United States directly, which seriously called into question the credibility of US commitment for the protection of Europe. In addition, America's unilateral military activism, with its potential of general escalation, raised the level of risk to Europe, insofar as its strategy in NATO merged with that of the USA, to be involved in the fight 'even if she did not wanted it'.[36] Military integration 'under the leadership of a partner infinitely more powerful than the others" also encourages *a free-rider attitude*, by depriving the governments and populations of the sense of their responsibilities in defence matters.[37] Subjection and the de-responsibilisation it provokes are especially incompatible with the right to self-determination and the will to preserve an autonomous capacity of assessment, decision and action.

If the reasoning is today as topical as ever, it is because US control over NATO is still just as unquestionable and its consequences for Europe still just as pernicious. One telling example is that of NATO's command structure. In order to ensure a complete unity of command, from the Pentagon down to allied activities on the ground, the Supreme Allied Commander Europe (SACEUR), who is the head of Allied Command Operations located at SHAPE, Mons, Belgium, is no other than the U.S. four star general heading U.S. European Command (U.S. EUCOM) located in Stuttgart. Also, the chief of Allied Forces South Europe (AFSOUTH) headquartered in Naples is at the same time the US commander in charge of US Naval Forces in Europe, belonging directly under US EUCOM. As such, it is not surprising that French attempts to secure the AFSOUTH Command post for a European met with such categorical US refusal; or that the US Sixth Fleet, theoretically to be transferred, in wartime, from US Naval Command Europe under NATO's jurisdiction, has never been placed under official NATO authority, even when supporting IFOR/SFOR NATO forces in Bosnia (which operated under AFSOUTH command) or during the Kosovo campaign (see Cogan 2003: 163-186). Indeed, why bother with transfer procedures and risk interference from European politicians when the gist of the planning and command runs, in any case, through a solely US chain. Of course, this American influence in and on NATO is not without its problems, as it was seen in one of the most well-known episodes of insubordination of recent years: the refusal of British General Sir Mike Jackson, in June 1999, to obey the order received from US General Wesley Clark (SACEUR) who, following instructions coming directly from the White House, wanted to engage Russian forces over the control of Pristina airport. 'I'm not going to start the Third World War for you' Jackson reportedly told General Clark during one heated exchange (Fitchett 1999; BBC 2000).

If the incident might help to explain the importance of the so-called 'caveats' (restrictions put in place by participating nations on the use of their forces under NATO command) in NATO operations, the problem which it highlights also applies to any form of integration under US 'leadership'. Be it the pooling of certain equipments under NATO's aegis or the common funding of Alliance operations, the logic is the same: the more one ties themselves within a framework where one does not have a real influence, the more one deprives themselves of a margin of manoeuvre to decide, to act and, in the final analysis, to exert a real influence.

[36] See, inter alia, President de Gaulle's press conferences, 5 September 1960 and 21 February 1966.
[37] See, inter alia, President de Gaulle's press conference, 11 April 1961 and Foreign Minister M. Couve de Murville's interview à l'ORTF, 17 March 1966.

Autonomy

The imperative of European autonomy would normally be considered self-evident; both for reasons of democratic legitimacy and strategic calculation, as well as for pragmatic long-term interests and elementary dignity. In the field of the ESDP itself, it is furthermore extremely difficult to explain why European defence, launched to confer credibility to the EU's foreign and security policy, would discredit itself by institutionalising its own subordination. This is all the more important given that Title V Article 11 of the EU's current treaty states that the first objective of the EU's common foreign and security policy, in which ESDP is said to be 'included', is 'to safeguard the common values, fundamental interests, *independence* [author's stress] and integrity of the Union'.[38] However, not only are we still waiting to see *when* these words will be translated into acts, but the question of even knowing *whether* they should be translated into acts one day, remains subject to debate.

The cause of this hesitation is as obvious as its absurdity. Once again, we are confronted with the fundamental divergences among EU Member States; above all, the model adopted and advocated by Great Britain and the one embodied and recommended by the French diplomacy. A vision usually referred to as the 'Greek temptation' and one that sees autonomy as a universal prerequisite.

As for the British model, its theoretical fundaments were already in place in the 1950s when 'the sentiment prevailing in Britain, expressed by such political figures as Harold Macmillan and by British pundits of the distinction of Alistair Buchan, was that the British would serve civilization as Greeks to the American Romans. In other words, Britain may have lost an empire but not the wisdom, as in the case of Greek slaves, to guide the powerful and relatively ignorant Americans, the Romans of the twentieth century' (Kaplan 2004: 11-12). Of course, this hope was, even with the less-than-noble connotation of the 'slave' precedent put aside, utterly naive and mistaken. As the ex-Director of the Royal Institute of International Affairs observed when assessing Tony Blair's foreign policy record; 'Given the Byzantine complexity of Washington politics, it was always unrealistic to think that outside powers – however loyal – could expect to have much influence on the US decision-making process' (Bulmer-Thomas 2006). A former British diplomat and ex-chairman of the UK's joint intelligence committee went further in highlighting the internal dynamics of the 'special relationship'. According to Rodric Braithwaite (2003); 'American policymakers find them [the British] useful as spear carriers in the UN and NATO, and as reasonably competent military allies when it comes to a shooting war. From time to time they try to use the British as a potential Trojan horse, if European integration looks like being too successful'. Braithwaite's precisions concerning the military-related consequences of the British attitude could provide some food for thought to the zealous advocates of a European defence that would allegedly be 'complementary' to America: 'in anything like a real war they [British forces] will only operate as an integral part of a US force, under US command and serving US interests'. The verdict is without appeal: 'In contrast to the French, who preferred to plough a more lonely but independent furrow, co-operation with the Americans has robbed the British of much of their independence'.[39]

It is indeed the policy pursued by Paris which constitutes the perfect counter-example of the self-enslaving behaviour of British diplomacy. In connection with which French policy it is preferable to dissipate two misleading stereotypes. Contrary to the widespread clichés, the line followed by Paris has nothing to do with national(ist)

[38] Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community, Official Journal C321 E/1, 29 December 2006.
[39] Rodric Braithwaite was British ambassador in Moscow, and chairman of the joint intelligence committee (1992-1993).

nostalgia, nor with any kind of mythic anti-Americanism. Quite the opposite, it is turned towards a resolutely European future and establishes the requirement of freedom of decision and action as an immutable axiom, with no need whatsoever for any circumstantial point of reference.[40] Like Howorth (2007: 160) has observed, 'France is not "balancing" (either in hard or soft terms) against the US. She is pursuing her own agenda and that, as she sees it, of the European Union. To the extent to which this might, at one level – and at one level only – make life more complex for US policy preferences, then that's simply a fact of life." Indeed, within the European framework, France simply follows the principle that we do not share sovereignty in order to collectively lose it, but rather with the purpose of enhancing it. When this is impossible, due to resistance from other Member States, then the rule remains unchanged: 'in waiting for the sky to clear, France is pursuing, by her own means, that which a European and independent policy can and should be'.[41]

Prospects

A number of commentators expect from some near-time deadlines (EU and NATO separate but parallel operations in Afghanistan and Kosovo, one NATO summit due in 2008 and another one in 2009, marking the Alliance's 60th anniversary, with a new US administration by then) the so-called normalisation of EU-NATO relations (Lidley-French 2007). In reality, the maximum which one can hope for, let alone the marketing effects and the cosmetic improvements which, without any doubt, will abound in this direction, is to see the deep tensions put on ice for one brief moment, so that they can arise in an even more conflictual form thereafter (see Vincze 2006e).

In fact, the accumulated grievances stem today from two basic sources. Added to the rancour related to the original situation of imbalance (reflected until the present day in NATO's still-decisive presence with its unchanged internal logic), comes the tensions associated with the *junior partner's* inevitable tendency towards emancipation (as illustrated by the launching of European defence).

With regard to the unequal partnership, as Charles A. Kupchan (2005: 152 & 267) observed, 'despite all that has changed since 1949, and especially since 1989, Europe has remained dependent on the United States to manage its security' which is all the more significant because 'control over security matters is, after all, the decisive factor in setting the pecking order and determining who is in command'. Zbigniew Brzezinski (1997: 59) put it even more bluntly when he said, 'the brutal fact is that Western Europe, and increasingly also Central Europe, remains largely an American protectorate, with its allied states reminiscent of ancient vassals and tributaries'. From a US perspective rightly so, since '[A] politically powerful Europe, able to compete economically while militarily no longer dependent on the United States would inevitably contest American preeminence' and could confine its scope 'largely to the Pacific ocean' (Brezezinski 2004: 91).

Things are, nevertheless, bound to change. The latest report in the WEU Assembly on the subject of EU-NATO relations noted that: 'Europe's emancipation from NATO and the United States in the field of security and foreign policy is irreversible and growing. It is responding to general trends in public opinion and Europe's awareness of its responsibility to deal with world security problems' (Goerens 2006). Although the term 'awareness' could arguably be replaced by 'impossibility to continue to avoid facing the

[40] For a deeper analysis of these particular aspects of French foreign policy, see Vincze (2002).
[41] President de Gaulle's press conference, 23 July 1964.

fact' and 'responsibility to deal' by 'the price of choosing not to', the basic observation is undoubtedly correct. As Kupchan (2006) observes it from the US side:

> The Atlantic order is experiencing a systemic change (…) their [Europe's and America's] interests have returned to being separate, even if contingently convergent – precisely why transatlantic security institutions have been strained to a breaking point (…) This setback is neither a temporary aberration nor a passing by-product of the policies of the Bush Administration. Rather, deeper changes in the geopolitical environment and America's domestic politics are at work; the Atlantic order will remain frayed regardless of which party holds power in Washington.

In the post-Cold War strategic context, both the original imbalance and the lengthy and wavering European emancipation process would be sufficient, each on its own, to poison and, with time, fatally undermine the transatlantic relationship. As long as the imbalance remains (with a Europe acquiescing to her dependence of the United States), any improvement in EU-NATO, as well as more broadly in transatlantic, relations can only be temporary and superficial. Under the present circumstances, the 'Other' is perceived on the two sides of the Atlantic either as a burden (free-rider or oppressing master), or as a rival (the 'challenger' versus the 'hegemon'), but generally both, burden and rival, at the same time. Instead of being able to act together like genuine partners (since this would only be possible between two sovereign parties, belonging more or less to the same category), Europe, dependent or disaggregated, is inapt to play her part. Her relations with the United States (both at the EU/collective and the national/bilateral level) have been poisoned throughout this last half-century by the inherent imbalance which means that one of the parties would always be able to leave the cooperation without its strategic potential being impaired, which is far from being the case for the other one. This tension-generating situation derives from European dependence; as long as this dependence lasts, it excludes any reciprocity and prohibits any genuine partnership.

Paradoxically, the only way out of this conundrum is the same that provokes, when the idea is evoked, immediate furore and controversy. It is for Europeans to assume their autonomy; a return to 'normalcy' so to speak (Kupchan 2006). This is the only way to replace the transatlantic relationship on a healthy – balanced, legitimate and thus sustainable – basis. The only way to achieve Euro-American cooperation in which the two parties take part freely, each one according to its own priorities and interests, liberated from the obligations linked to the position of the 'vassal' or that of the 'leader'. In other words, a cooperation based on choice, and not on a sense of constraint.

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Jean Monnet, the 'father' of European integration and a strongly committed friend of the United States, wrote as early as in 1948 that 'the current situation in which our security depends on America cannot continue for a long time before it deteriorates (…) From "the stake" that we are now, will we become "associates", the masters of our own destiny? It is the question'.[42] As we have seen, back in those immediate post-War years full non-dependence was rather unrealistic, but almost six decades have passed since then. The geopolitical conditions have already been radically transformed, and we are obviously far, very far, from witnessing the *end of history*. In view of the current and forthcoming reconfiguration of the international order, it might not be completely useless to recall another warning from the same Jean Monnet: 'The only choice we have

[42] Jean Monnet's letter addressed to his friend René Mayer from Washington, 18 April 1948. Quoted in Roussel (1996: 486).

is between changes in which we will be dragged into and changes which we will have been strong enough to want and to bring about'.[43]

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[43] Speech by Jean Monnet in Strasbourg, 12 May 1954.

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EU Influence on the Citizenship Policies of the Candidate Countries: The Case of the Roma Exclusion in the Czech Republic

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Abstract

Although the persons of Roma ethnicity who were deprived of the Czech citizenship upon the split of the Czech and Slovak Federation by controversial law No. 40/1993 were not in the end left stateless, the Commission can be reproached for not using the influential position it enjoyed in the course of the pre-accession process preceding the fifth enlargement of the European Union (1 May 2004) in order to insist that the Czech Republic alter its ethnically-biased citizenship policy. Although some steps in this direction were taken by the Commission, they fell short of addressing the whole range of discriminatory provisions of this Czech legislation preventing the former Czecho-Slovak citizens of Roma ethnicity from becoming citizens of the Czech Republic. In Addition to the overall ineffectiveness of its pre-accession promotion of equal access to Czech citizenship of all permanent residents of the Czech Republic their ethnic origin notwithstanding, the Commission made a controversial decision to treat the exclusion from citizenship which was *de facto* based on ethnicity as a 'civil and political' rights issue, rather than a minority rights issue. This dubious decision, allowed the Commission to distinguish its pre-accession involvement in the reforms in the Czech Republic on the one hand, and in Latvia and Estonia on the other, where the exclusion of ethnic minorities from the access to citizenship was regarded as a key issue pertaining to the protection of minority rights. The ill-articulated position of the Commission is due, this paper suggests, mainly to the limitations on the EU's involvement in the Member States' citizenship domain and *de facto* comes down to the application of different pre-accession standards to different minority groups in the candidate countries. To ensure genuine protection of ethnic minorities in the Member States-to-be, the EU has to alter its approach to the issues of ethnicity-based exclusion from citizenship in the course of the future expansions of the Union.

THE CZECH CITIZENSHIP[1] LAW OF 1993[2] WAS CONSTRUED IN SUCH A WAY THAT up to 25,000 of former Czechoslovak citizens of Roma ethnicity were either viewed as Slovak, or stateless, notwithstanding their ties with the Czech Republic.[3] Despite the ability of

This article is based on a paper presented at the ASN 2007 World Convention, 12–14 April 2007, Columbia University, New York.

[1] For the purposes of this paper, citizenship is understood solely as a normative concept, *i.e.* the legal status of a citizen. Other aspects of the concept to be found in the literature, especially those related to the limited possibilities of some groups to *de facto* benefit from their legal status of citizens are omitted for the sake of clarity of the argument presented herein. Given the amount of discrimination the Roma are facing, it is clear that even possessing a formal status of citizens, their actual enjoyment of citizenship rights remains limited.

[2] Law No. 40/1993 *Sb.*

[3] R. Linde, 'Statelessness and Roma Communities in the Czech Republic: Competing Theories of State Compliance', (2006) 13 *International Journal of Minority & Group Rights*, 342. Earlier assessments spoke about up to 100.000 individuals affected: A.M. Warnke, 'Vagabonds, Tinkers,

ISSN 1815-347X online – Kochenov, D. (2007) 'EU influence on the Citizenship of Policies of the Candidate States: The Case of the Roma Exclusion in the Czech Republic', *Journal of Contemporary European Research*, Vol. 3, No. 2, pp. 124-140.

the European Union (EU) to influence this situation, the issue was only resolved several years after the adoption of the law.[4] The role of the EU – an all-powerful reform-promoter in the course of the pre-accession process – in solving this problem appears rather marginal.[5] Although the citizenship story of the Czech Roma can be considered a tale from the past, it is of acute relevance to the functioning of the contemporary European Union, since it is a clear illustration of a telling failure in the pre-accession policy, which could have been avoided. This story provides a lesson for the EU and could help prevent the repetition of similar situations in the future.

The controversial law was adopted during the same year as the Copenhagen European Council formulated the core of the pre-accession conditionality principle designed to radically change the way enlargements of the European Union were legally regulated.[6] The Copenhagen criteria did not only focus on the issues related to democracy, the Rule of Law and the transposition of the *acquis communautaire*,[7] but also made ethnic minority protection one of the key elements of the pre-accession assessment of the candidate countries.[8] A large array of Copenhagen-related documents has been devised by the Commission and other Community Institutions since 1993, enabling the EU to actively promote its law and its values[9] among the countries wishing to accede.[10] Those countries complying with the recommendations stated in the Copenhagen criteria and the Copenhagen-related documents were destined to join the EU, while those failing to comply were granted less financial assistance[11] and could even leave the pre-accession race as the negotiations could simply be frozen by the EU. As a candidate country back then, the Czech Republic was likely to have difficulties with passing the pre-accession conditionality test without amending its discriminatory citizenship legislation.

Unlike what could have been expected of it, the Commission awarded remarkably little attention to this issue. Citizenship was analysed under the auspices of the civil and political rights assessment as opposed to ethnic minority protection, thus allowing the

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and Travellers: Statelessness among the East European Roma', (1999) 7 *Ind. J. Global Legal Stud.*, 358; F. Bertram, 'The Particular Problems of the Roma', (1997) 3 *U.C. Davies J. Int'l L. & Pol'y*, 7.

[4] The amendment to the law that allowed the majority of affected Roma to get their citizenship restored was passed in 1999: Linde, n 3 above.

[5] *Cf.* Linde (n 3 above), who analyses the roles of the states, NGOs and other international organisations in putting pressure on the Czech Republic to amend the law.

[6] Presidency Conclusions, European Council (Copenhagen, 21, 22 June 1993), *Bull. EC* 6-1993. For analysis *see* C. Hillion, 'The Copenhagen Criteria and Their Progeny', in C. Hillion, (ed.), *EU Enlargement: A Legal Approach* (Hart, 2004); D. Kochenov, 'Behind the Copenhagen Façade: The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law', (2004) 8(10) *EIoP* 1 <http://www.eiop.or.at/eiop/texte/2004-010.htm>, accessed 15 September 2007;

[7] C. Delcourt, 'The *Acquis Communautaire:* Has the Concept Had Its Day?', (2001) 38 *CMLRev.*, 829.

[8] C. Hillion, 'Enlargement of the European Union – the Discrepancy between Membership Obligations and Accession Conditions as Regards the Protection of Minorities', (2004) 27 *Fordham Int'l L.J.*, 715; G.N. von Toggenburg, 'A Rough Orientation through a Delicate Relationship: The European Union's Endeavours for (Its) Minorities', (2000) 4(16) *EIoP*, 1 <http://eiop.or.at/eiop/texte/2000-016.htm>, accessed 15 September 2007; D. Kochenov, 'The Summary of Contradictions: The EU's Main Internal and External Approaches to Ethnic Minority Protection Outlined', *Boston College Int'l & Comp. L.Rev.* (forthcoming), draft available at SSRN: <http://ssrn.com/abstract=931189>, accessed 15 September 2007.

[9] Especially those mentioned in Art. 6(1) TEU.

[10] On the analysis of all the types of the pre-accession legal and political documents released and their potential pre-accession effectiveness *see* D. Kochenov, 'EU Enlargement Law: History and Recent Developments: Treaty – Custom Concubinage?', (2005) 9(6) *EIoP*, 1, <http://eiop.or.at/eiop/texte/2005-006a.htm>, accessed 15 September 2007.

[11] *See* Council Regulation (EC) 622/98 of 16 March 1998, *OJ* L 85/1. *See also* K. Inglis, 'The Pre-accession Strategy and the Accession Partnerships', in A. Ott and K. Inglis (eds.), *Handbook on European Enlargement* (T.M.C. Asser Press, 2002).

Commission to distinguish the Roma citizenship issues from the problem of the statelessness of Russian and Ukrainian minorities ('Russian-speaking' in the Commission's terminology) in the Baltic States of Latvia and Estonia.[12] Consequently, this allowed the Commission to practise differentiated treatment of the candidate countries, which was officially not tolerated in the course of the pre-accession assessment of the Member States-to-be, since, according to the European Council all the candidate countries were 'destined to join the Union *on the basis of the same criteria and* […] *on an equal footing*'.[13]

In the end, progress in the resolution of the statelessness issue for the Czech Roma was related to the activities of actors outside the pre-accession framework, such as the OSCE and the UK and Canadian governments. Thus although the Roma deprived of citizenship under the law of 1993 got citizenship rights in the end, this development cannot be viewed as a pre-accession success of the EU and can thus be placed next to the general failure of solving the statelessness problem among the ethnic minorities in the Baltic states of Latvia and Estonia.[14] The system of the pre-accession conditionality instruments aimed at promoting reform in the Czech Republic remained largely unused, presenting this important issue as marginal. Similar problems related to a reluctance to employ the pre-accession conditionality to actively promote non-discrimination and inclusion are likely to arise during the application of the pre-accession conditionality principle to future candidate countries, especially the countries of South-Eastern Europe where large minority populations are present. This particularly concerns the former Yugoslavia coping with the aftermath of a violent ethnic conflict.[15] The Commission should retune its pre-accession approach, to make it work effectively for the benefit of the EU and its citizens alike.

The paper begins by illustrating the pre-accession reform-promotion potential in the field of citizenship regulation, putting it into the context of the Community powers in the field of the regulation of acquisition of nationality in the Member States. Although officially prohibited by Article 17 EC, which makes a clear connection between European citizenship status and the nationality policies of the Member States, disallowing the Union to intervene with the latter, the influence of the EU on the nationality policies of the Member States has been considerable. This is even more the case when pre-accession reform promotion is at issue, since the EU's ability to intervene with the legal systems of the candidate countries is much greater compared with its powers *vis-à-vis* the Member States proper. To present the pitiful position of the Roma in the Czech Republic after the split of the Federation in a larger context, Part 2 of the paper provides a concise account of the history of Roma persecution in Europe. Part 3 discusses the statelessness of the Czech Roma, the provisions of the controversial Czech law and the

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[12] On the situation of the Russian speaking minorities in Latvia and Estonia *see* P. Van Elsuwege, 'Russian-Speaking Minorities in Estonia and Latvia: Problems of Integration at the Threshold of the European Union', [2004] 20 *ECMI WP*, 1; P. Van Elsuwege, 'State Continuity and Its Consequences: The Case of the Baltic States', (2003) 16 *LJIL*, 377; D.J. Smith, 'Minority Rights, Multiculturalism and EU Enlargement: The Case of Estonia', [2003] 1 *JEMIE*, 1; V. Poleštšuk and A. Semjonov, *Report. International seminar 'Minorities and Majorities in Estonia: Problems of Integration at the Threshold of the EU'*, Tallinn, 8, 9 January 1999, <http://www.lichr.ee/rus/centre/seminari/seminar1999.rtf>, accessed 15 September 2007; M. Holzapfel, 'Note: The Implications of Human Rights Abuses Currently Occurring in the Baltic States against the Ethnic Russian National Minority', (1995–1996) 2 *Buff. J.Int'l L.*, 1; A.J. Hanneman, 'Independence and Group Rights in the Baltics: A Double Minority Problem', (1995) 35 *Va. J. Int'l L.*, 485.

[13] Luxembourg European Council (12, 13 December 1997), Presidency Conclusions, para 10 (emphasis added).

[14] D. Kochenov, 'Pre-Accession, Naturalisation, and "Due Regard to Community Law"', (2004) 4(2) *Romanian J. Pol. Sci.*, 71, <http://ssrn.com/abstract=926851>, accessed 15 September 2007.

[15] *See e.g.* A. Petričušić, 'Wind of Change: The Croatian Government's Turn towards a Policy of Ethnic Reconciliation', [2004] 6 *EDAP*, 1, <http://www.eurac.edu/documents/edap/2004_edap06.pdf>, accessed 15 September 2007.

Commission's response to it during the pre-accession assessment of the Czech Republic's compliance with the Copenhagen criteria. A parallel is drawn between the Commission's divergent behaviour in two similar situations: the promotion of inclusive citizenship policies in Estonia and Latvia on the one hand and in the Czech Republic on the other . Finally, having demonstrated the inconsistent behaviour of the Commission in the course of the solution of the statelessness problem in the Baltic States and in the Czech Republic, the conclusion calls for a reinterpretation of the EU's approach to the pre-accession citizenship reform promotion in the countries aspiring to become full Member States of the block.

Citizenship, nationality, pre-accession and the powers of the Union

Citizenship is generally viewed as a 'right to have rights',[16] since its importance for the enjoyment of basic rights is crucial. Scholars, eager to deprive states of the possibility to act arbitrarily in this domain, talk about the right to a nationality under international law.[17] Yet, the 'right to nationality' stated in Article 15 of the Universal Declaration of Human Rights[18] has not found consistent implementation in binding international instruments so far. The European Convention on Human Rights (ECHR)[19] is also silent about such a right.[20]

What is crucial about citizenship is that, mostly due to its importance for the legal status of every individual, it is generally viewed as a key element of state sovereignty. As a consequence of this, international law allows states themselves to clarify who their citizens are. The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws is unequivocally clear on this issue: 'it is for each State to determine under its own law who are its nationals'.[21] As a direct consequence of this nationality can only be conferred by national law – international law as it stands today can only hypothetically influence such decision of the Member States,[22] not confer nationality on individuals by itself. Even the famous dictum of the Permanent Court of International Justice (PCIJ) in the *Tunis and Morocco Nationality Decrees* case, where the PCIJ clarified that there can come a time in the future, when the role played by international law in the sphere of conferral of citizenship rights will increase,[23] did not alter the reality of national dominance in the citizenship domain. The granting of citizenship by EU Member States is not an exception in this regard. At the same time, however, the Member States' citizenship policies are influenced in certain ways due to their EU membership, making the regulation of this issue by the Member States of the EU considerably different to the regulation taking place in the third countries.

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[16] *Trop* v. *Dulles* 356 U.S. 86, 102 (1958).
[17] J.M.M. Chan, 'The Right to a Nationality as a Human Right: The Current Trend Towards Recognition', (1991) 12 *Hum. Rts. L.J.* 1, 2; Ko Swan Sik, 'Nationaliteit in het Volkenrecht', (1981) 83 *Mededeelingen van de Nederlandsche Vereeniging voor Internationaal Recht*, 1.
[18] However, this provision has been used by the national courts of several States: Chan (1991), 3 & fn. 20. The Inter-American Convention on Human Rights contains a similar provision (Art. 20).
[19] Rome, 4 November 1950, ETS no. 005.
[20] *See* ECt.HR *X.* v. *Austria* [1972] Appl. No. 5212/71. Numerous examples exist where applicants relied on the ECHR in the cases of loss or refusal to grant nationality. *See* ECt.HR *Kafkasli* v. *Turkey* [1995] App. No. 21106/92; ECt.HR *Salahddin Galip* v. *Greece* [1995] Appl. No. 17309/90.
[21] L.N. Doc. C 24 M. 13.1931.V., Art. 1. *See also* Art. 2 of the Convention: 'Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State'.
[22] *See in this regard* Advisory Opinion of the Inter-American Court of Human Rights, *Re Amendments to the Naturalization Provisions of the Constitution of Costa Rica* [1984] OC-4/84.
[23] PCIJ *Tunis and Morocco Nationality Decrees* [1923] PCIJ Ser. B., No. 4, 24.

The powers of the Union in the field of regulation of national citizenship of the Member States are drastically different from the Union's capacity to intervene in the citizenship domain of the candidate countries on the way to full membership.

Citizenship, nationality and full Member States of the Union: slow convergence

De jure the European Union has no powers in the domain of nationality of the Member States and has to accept Member States' nationalities as such. The European citizenship status, which is the only nationality-like legal construction in the European legal order, is purely derivative. Article 17 TEC is clear on this issue:

> 1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.
> 2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Unlike other key-notions of European law, such as that of a 'worker',[24] the European citizenship (through the notion of the 'nationality of a Member State') is largely left within the virtually exclusive domain of the Member States. It means that the Member States themselves decide who their nationals are for Community law purposes, thereby automatically conferring on them European citizenship. Such practice is not without limitations, however. As spelled out by the ECJ in *Micheletti*, any decision of a Member State related to that state's nationality should be taken with 'due regard to community law'.[25] At the same time, the Member States are not given any discretion as far as the recognition of the nationality of any other Member State is concerned. Thus in its ruling in *Micheletti* the ECJ refused to accept the 'genuine link'[26] rule formulated by the ICJ in the *Nottebohm* case.[27] In fact, the whole logic of free movement within the area of freedom, security and justice is antithetical to the 'genuine link' idea, leaving the ECJ no choice in this regard. The ECJ's approach to European citizenship is thus highly formalistic and firmly rooted in the necessity to enjoy formal status as a citizen in order

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[24] Community law alone can determine the scope of the notion: Case 75/63 *Unger* [1964] ECR 177; Case 61/65 *Vaassen Gobbels (a widow)* [1966] ECR 261; Case 44/65 *Singer* [1965] ECR 965; Case 66/85 *Lawrie-Blum* [1986] ECR 2121, para 17.

[25] Case C-369/90 *Mario Vicente Micheletti et al.* v. *Delegación del Gobierno en Cantabria* [1992] ECR I-4239, para 10, annotated by H.U. Jessurun d'Oliveira, (1993) 30 *CMLRev.*, 623.

[26] ICJ *Nottebohm* (1955) ICJ Reports 4. The citizenship of Lichtenstein held by Mr. Nottebohm, who was also a German national, was not recognised by Guatemala, the latter state treating Mr. Nottebohm as a German citizen. The ICJ agreed with such a restrictive vision, ruling that nationality is a 'legal bond having as its basis a social fact of attachment, a genuine connection of experience, interests and sentiments, together with the existence of reciprocal rights and duties'. On the *Nottebohm* case see the literature recommended in A. Bleckmann, 'The Personal Jurisdiction of the European Community', (1980) 17 *CMLRev.*, 467, 477 & fn. 16. For a representative list of international documents regulating citizenship status and the obligations of citizens *see* K. Rubinstein and D. Adler, 'International Citizenship: The Future of Nationality in a Globalized World', (2000) 7 *Ind. J. Global Legal Stud.*, 519, 525 & fn.32.

[27] Early commentators expected that the 'genuine link' rule of the *Nottebohm* case would also be applied in European law, leaving the Member States free not to accept the nationality of all persons coming from other Member States: Bleckmann, n 26 above, 477.

to benefit from citizenship rights: an emphasis is always put on the possession of a formal legal status, which can only be granted by the Member States.[28]

Notwithstanding the *de jure* powerlessness of the EU in the citizenship domain, recent studies demonstrated with clarity that the freedom enjoyed by the Member States in this field is becoming more and more elusive: the interplay of different nationality rules of the Member States affects each of them in a number of very important respects.[29] Even if not acknowledging this openly, EU Member States are certainly influenced by the opinions voiced by other Member States regarding desirable and non-desirable nationality and naturalisation policies.

Ireland is an example of a Member State that changed its strict *jus soli* principle following the peer-pressure of other EU nations.[30] The reasons why such pressure comes about are very simple: by conferring nationality on a person, a Member State also makes this person a European citizen, and, by virtue of the latter status, a beneficiary of the Treaty citizenship rights. Given that one of the key rights on the European citizenship list is the right of free movement, which encompasses the rights to move to any Member State of the Union and to reside and take up employment there,[31] any citizenship policy espoused by any EU Member State has clear bearing on all the EU partners.

While some Member States, like Ireland, opted to follow the recommendations of other Member States, others were quite firm in resisting such influences. Spain, with its recent pardon of illegal immigrants provides an excellent example of the latter approach.[32] Whether the Member States want it or not, the process of integration will inevitably result in a certain harmonisation of nationality legislation of all the twenty-seven Member States.[33] This can happen even without an express intervention of the Union, which is not empowered to act in this sphere.[34] A strong argument can be made for the exclusive Community regulation of decisions on who the nationals of Member States are for Community law purposes *i.e.* to let the Union itself decide who its own citizens are. Indeed, by requiring the Member States to accept the Community definition of a 'worker', a loophole in Community law remains open as long as they are free to play with the definitions of nationality 'for Community law purposes', rendering the efforts to create a consistent Community definition of a 'worker' futile.[35] Dangerously, the whole

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[28] Besides Case C-369/90 *Micheletti* [1992] ECR I-4239 *see also* Case C-286/90 *Anklagemgdigheden* v. *Peter Michael Poulsen et Diva Navigation Corp.* [1992] ECR I-6019 (concerning the nationality of a ship). This argument can also be supported by Case C-200/02 *Chen* v. *Secretary of State for the Home Department* [2004] ECR I-9925.

[29] *E.g.* K. Rostek and G. Davies, 'The Impact of Union Citizenship on National Citizenship Policies', (2006) 10(5) *EloP*, 1, <http://eiop.or.at/eiop/index.php/eiop/article/view/2006_005a/21>, accessed 15 September 2007.

[30] *ibid.*, and the relevant literature cited therein.

[31] Art. 18 TEC.

[32] Rostek & Davies, n 29 above, and the relevant literature cited therein.

[33] As early as in 1983 Evans acknowledged that 'harmonisation of the nationality laws of the Member States may ultimately prove necessary': A. Evans, 'Nationality Law and the Free Movement of Persons in the EEC: With Special Reference to the British Nationality Act 1981', (1982) 2 *YbEL*, 173, 189.

[34] According to Art. 5 TEC, the Community can only act 'within the limits of the powers conferred upon it by [the EC Treaty] and of the objectives assigned therein'. Art. 17 TEC is clearly unable to confer on the Community a power to regulate the acquisition of the Member States' nationalities.

[35] Jessurun d'Oliveira, n 25 above, 627; *see also* A. Evans, 'Nationality Law and European Integration', (1991) 16(3) *ELRev.*, 190. An analogy with the Community approach to the definition of the 'workers of the Member States' has oftentimes been applied in the literature to make an argument for a purely Community definition of Member States' nationals for the purposes of Community law and, consequently, European citizens. *See e.g.* D.F. Edens and S. Patijn, 'The Scope of the EEC System of Free Movement of Workers', (1972) 9 *CMLRev.*, 322, 323.

working of European law becomes, through its scope *ratione personae*, *de facto* dependent on poorly-articulated international customary law on nationality.[36]

Citizenship, nationality and the candidate countries: Possibilities of Community intervention

In contrast with the general lack of competencies to regulate the domain of nationality of the Member States, the Community is a powerful actor in the field of nationality regulation in the candidate countries preparing for the accession to the EU. Unlike the convergence possibilities apparent from the analysis of the development of nationality legislation in the full Member States, the candidate countries' nationality legislation can legally become subject to Union's intervention in the course of the pre-accession process.[37] This is so because the whole pre-accession process is organised around the check of the candidate countries' compliance with the Copenhagen criteria, including, *inter alia*, democracy, the Rule of Law, the protection of human rights and the respect for and the protection of minorities. In other words, the Community could demand of the candidate countries to alter any legislative or administrative act which contradicts the Copenhagen criteria. Since the wording of the Copenhagen criteria is much broader in scope than the *acquis communautaire,* the EU is not restrained by its lack of powers in the citizenship domain apparent from its relation with full Member States.

The fact that the Copenhagen-related documents contain assessments of developments in areas falling outside the *acquis* proves that the EU was not restrained by Article 5 TEC limitations in the course of the pre-accession. This is justified by the interpretation of articles 49 and 6(1) TEU in conjunction with Article 5 EC. Given the broad wording of Article 6(1) EU, it would be logical to presuppose that the standard of democracy, the Rule of Law and human rights contained in the Article is *not per se* confined to the sphere of EU competencies. Moreover, since Article 6(1) TEU is employed as a 'gate-keeper' to the EU – as required by a reference made to it from Article 49 TEU– to ensure that only democratic states respecting human rights join, limiting its reach to the issues covered by the *acquis* would be contrary to its very purpose and would fail to ensure the effective functioning of the EU's enlargement law as envisaged by the framers. In other words, whatever the scope of the *acquis*, in the context of pre-accession, the EU was competent to promote compliance with the Copenhagen criteria as it saw fit, including the area of citizenship and naturalisation requirements.

At least one example of active involvement of the European Union in the citizenship policies of the prospective Member States can be provided. The Commission was very active in dealing with the issue of statelessness among the 'Russian speaking' minorities in Latvia and Estonia. Although generally the Commission's actions are impossible to characterise as a success, as was clearly demonstrated by Hughes,[38] positive developments can be recorded in several areas of citizenship regulation in those countries, including, *inter alia*, the removal of 'naturalisation windows' in Latvia, resulting in wider eligibility for naturalisation among the non-citizens belonging to ethnic

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[36] S. Hall, 'Determining the Scope *ratione personae* of European Citizenship: Customary International Law Prevails for Now', (2001) 28(3) *LIEI*, 355.

[37] On the notion of the pre-accession see *e.g.* a number of Maresceau's works: M. Maresceau, 'Pre-accession', in M. Cremona, (ed.), *The Enlargement of the European Union* (OUP, 2003); M. Maresceau, 'The EU Pre-accession Strategies: A Political and Legal Analysis', in M. Maresceau and E. Lanon (eds.), *The EU's Enlargement and Mediterranean Strategies, A Comparative Analysis* (Palgrave, 2001); M. Maresceau, 'On Association, Partnership, Pre-accession and Accession', in M. Maresceau, (ed.), *Enlarging the European Union: Relations between the EU and Central and Eastern Europe* (Longman, 1997).

[38] J. Hughes, '"Exit" in Deeply Divided Societies: Regimes of Discrimination in Estonia and Latvia and the Potential for Russophone Migration', (2005) 43(4) *JCMS* , 739.

minorities, and the reversal of the Latvian policy on the nationality of children born to stateless parents.[39] These two examples, illustrating timid successes of the Commission's pre-accession involvement in the field of nationalisation regulation in the candidate countries make it clear that the Union's capacity to intervene with the nationality issues in the candidate countries is incomparably more considerable than its virtually powerless position as far as the regulation of the nationality issues in the Member States is concerned.[40]

To make the regulation of the pre-accession process functional in practice, the Union was in possession of an array of Copenhagen-related documents, allowing it to put pressure on the candidate countries unwilling or unable to perform with a view to achieving the expected results.[41] Of particular relevance for the Czech issue in question are (1) the Commission's Opinion on the Czech Republic's Application for the Membership of the European Union released in 1997, which analysed the overall prospects of the Czech Republic with regard to future EU membership and tackled the main issues viewed by the Commission as in need of reform before Czech accession could take place, (2) Regular Reports on the Czech Republic's progress towards accession released by the Commission on an annual basis beginning in 1998, and (3) the Accession Partnerships with the Czech Republic, adopted by the Council in the form of Decisions, enabling the EU to outline clear objectives for the pre-accession reform going on in the country and to suspend the granting of pre-accession financial assistance if the progress made by the Czech Republic were considered insufficient.[42]

Before analysing the Commission's involvement in the solution of the Czech Roma citizenship problem, it is reasonable to outline the persecution the Roma in Europe to place the Czech case in the overall context of hostility towards this ethnic group, partly clarifying the inherent motivation of the Czech government to pass the law.

East-European Roma: a brief history of oppression

The history of the Roma can be summarised as 'a story of hate, oppression, and neglect'.[43] Their persecution is well documented.[44] Alongside the researchers, the Commission also saw some of the reasons for the poor contemporary situation of the Roma as caused by the 'accumulation over time of factors that have worsened their living conditions',[45] although it is unclear how far in back time the Commission was looking.

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[39] Kochenov, n 14 above.
[40] The only possibility to intervene left for the Union in such setting is to act on the ECJ's *obiter dictum* in *Micheletti*, demanding the Member States to reverse their citizenship policies which are found to be in breach of Community law.
[41] *For analysis see* Kochenov, n 10 above.
[42] All these documents are available from the enlargement web-pages of the Commission: <http://ec.europa.eu/enlargement/archives/enlargement_process/past_enlargements/eu10/czech_republic_en.htm#Overview_of_key_documents_related_to_enlargement>, accessed 15 September 2007.
[43] E. Banach, 'The Roma and the Native Americans: Encapsulated Communities within Larger Constitutional Regimes', (2002) 14 *Fla. J. Int'l L.*, 369.
[44] *E.g.* B. Alt and S. Folts, *Weeping Violins: The Gypsy Tragedy in Europe* (Thomas Jefferson University Press, 1996); A. Haun, 'The Long Road: The Roma of Eastern and Central Europe and the Freedom of Movement and Right to Choose Residence', (2000) 33 *Geo. Wash. Int'l L. Rev.*, 157, 158, 159; N. Gheorghe, 'Roma-Gypsy Ethnicity in Eastern Europe', (1991) 58(4) *Social Research*, 829; B.A. Fisher, 'No Roads Lead to Rom: The Fate of the Romani People under the Nazis and in Post-War Restitution', (1998) 20 *Whittier L. Rev.*, 94 *et seq.*; Bertram, n 3 above; I. Hancock, *Pariah Syndrome: An Account of Gypsy Slavery and Persecution* (2nd ed., Karoma, 1987).
[45] 2001 Bulgarian Report, 23.

Believed to have come from Northern India in the 13th century, the Roma migrated around the whole of Eastern and Western Europe. Initially, they enjoyed immunity as pilgrims and were protected by letters from the Pope, the Holy Roman Emperor and other esteemed religious and political leaders.[46] Most notably, they were immune from prosecution by the local authorities, since the exclusive power to punish Roma offenders belonged to the Roma 'nobility'.[47] Unwilling or unable to integrate into the majority societies, the Roma were distinct from the rest of the population of the European continent both culturally and linguistically.

The relative harmony in the relations between the Roma and other Europeans did not last for long. Already in the 14th century Roma were widely persecuted, blamed for disasters and catastrophes, like the Prague fires of 1541,[48] and enslaved. Two lands of medieval Europe (Moldova and Walachia)[49] kept Roma as slaves for almost 500 years,[50] before the abolition in 1855 and 1856 respectively.[51] The legislation entitling citizens 'to kill Roma on sight' was in force throughout medieval Europe sometimes well into the 19th century.[52]

In the 20th century the history of persecution and repression continued. Symbolising the 'other' for the majority of Europeans, the Roma of some countries found themselves in extremely difficult conditions due to the persecution by the state and prejudice of the majority of the population. Nazi Germany continued the genocide against this ethnic group.[53] Roma populations of some CEECs were almost totally wiped out (from 500 thousand to a million were killed).[54] Notwithstanding the fact that the reasons for persecution of the Jews and the Roma by the Nazi regime were identical, the genocide of the Roma has not received as much attention; the Roma communities did not get any compensation from the German government[55] and were even said to be persecuted for 'social' rather than for 'racial' reasons.[56]

The Communist regimes continued the suppression of the Roma, although generally, they are reported to have brought a slight improvement to their situation.[57] Guaranteed work and housing coupled with compulsory education and a strong repression of nationalism[58] led to some improvements. These improvements were certainly achieved at a cost of deterioration of the unique Roma culture, which came as a consequence of the prohibition of the nomadic way of life for the Roma. Among the outrageous policies aimed at the wider inclusion of the Roma into the societies was the sterilisation of Roma women. This policy largely repeated the Nazi policy of Roma sterilisation applied since 1933(Law on the Genetically Impaired Offspring), Reports suggest that the sterilisation of Roma women without obtaining their voluntary informed consent continued in

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[46] A. Fraser, 'Juridical Autonomy among Fifteenth and Sixteenth Century Gypsies', (1997) 45 *Am. J. Comp. L.*, 294.
[47] *ibid.*, 293 *et seq.*
[48] Banach, n 43 above, 372.
[49] Now the territory of the Moldova Republic and part of Romania.
[50] As reported by Hancock, already in 1348 the market for trade in Roma slaves existed in Europe: Hancock, n 44 above, 2.
[51] Banach, n 43 above, 368.
[52] Fisher, n 44 above, 96.
[53] *See* G. Lewy, *The Nazi Persecution of the Gypsies* (OUP, 2000); Fisher, n 44 above.
[54] Estimates differ greatly: Banach, n 43 above, fn. 92 and Fisher, n 44 above, 103.
[55] Fisher, n 44 above.
[56] *See* Gheorghe, n 44 above. *See also* Fisher, n 44 above, 93.
[57] *See e g.* Warnke, n 4 above, 344 *et seq*.
[58] Theoretically, strong repression of nationalism was at the core of the Soviet state model. *See e.g.* I. Stalin, *Marksizm i natzyonal'no-kolonial'nyj vopros, sbornik statej i rechej* (Partijnoje izdatel'stvo, 1934), *esp.* 192.

Slovakia in the 1990s.[59] On the other side of the iron curtain, however, the life of the Roma was not much better. Some West-European nations only stopped the implementation of discriminatory policies towards the Roma in the end of the last century. For instance, between 1920 and 1972 Switzerland implemented *Pro Juventute* – a programme, under which children were taken from Roma families. Similar policies, deeming parents 'unfit' to raise children only because they were Roma, were implemented in Italy.[60]

Although some scholars try to present it otherwise, arguing that the communist policies were among the causes of the Roma crisis in the CEECs,[61] the overwhelming majority of evidence demonstrates that it is only with the fall of the communist regimes that the situation of the Roma has deteriorated to a level unknown before.[62] After the abolition of censorship the mass media often took a racist position towards the Roma, the amount of violence against the Roma increased. Discrimination in housing, use of municipal and other services, access to work, coupled with school segregation, and the cases of pogroms, lynching, racist attacks, *de facto* denial of justice, and police violence against the Roma became reality in the CEECs. The prejudice against the Roma in the region is so strong that people, including university staff and civil servants openly state their dislike of the Roma. [63]

Combating anti-Roma prejudice was one of key issues discussed by the Commission in the Copenhagen Related documents.[64] Not surprisingly, 'changing attitude at the local

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[59] Banach, n 43 above, 373. *Also* Fisher, n 44 above, 99; Center for Reproductive Rights and Poradňa pre občianske a ludské práva in co-operation with I. Zoon, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, 2003, 100 <http://www.reproductiverights.org/pub_bo_slovakia.html#report>, accessed 15 September 2007.

[60] Bertram, n 3 above, 6.

[61] J. Šiklová and M. Miklušáková, 'Law as an Instrument of Discrimination: Denying Citizenship to the Czech Roma', (1998) 7(2) *EECRev.*, <http://www.law.nyu.edu/eecr/vol7num2/special/denyingcitizenship.html>, accessed 15 September 2007.

[62] Which is also recognised by the Commission in the Regular Reports: *e.g.* 1998 Hungarian Report, 11. On the influence of the transition to democracy on the situation of the Roma minority *see e.g.* I. Pogány, 'Legal, Social and Economic Challenges Facing the Roma of Central and Eastern Europe', (2004) *Queen's Papers on Europeanisation* , 1; I. Pogány, 'Refashioning Rights in Central and Eastern Europe: Some Implications for the Region's Roma', (2004) 10(1) *EPL*, 85; P. Vermeersch, 'Ethnic Mobilisation and the Political Conditionality of European Union Accession: The Case of the Roma in Slovakia', (2002) 28(1) *J. Ethnic & Migration Stud.*, 1; Z. Barany, *East European Gypsies: Regime Change, Marginality and Ethnopolitics* (CUP, 2001); D. Ringold, *Roma and the Transition in Central and Eastern Europe: Trends and Challenges* (World Bank, 2000); I. Pogány, 'Accommodating an Emergent National Identity: The Roma of Central and Eastern Europe', (1999) 6 *Int'l J. Minority & Group Rts.* 439; M.W. Brown, 'The Effect of Free Trade, Privatisation and Democracy of the Human Rights Conditions for Minorities in Eastern Europe: A Case Study of the Gypsies in the Czech Republic and Hungary', (1998) 4 *Buff. Hum. Rts. L. Rev.*, 275; I. Tomova, *Tziganite v perioda na prehod* (Mezhdunaroden tzentăr po problemite na maltzinstvata i kulturnite vzaimodejstvija, 1995).

[63] *See* Reports issued by the Budapest based European Roma Rights Center, available at <http://www.errc.org>, accessed 15 September 2007; Annual World Reports by the Human Rights Watch, available at <http://www.hrw.org/reports/world/reports>, accessed 15 September 2007; OSCE HCNM, *Report on the Situation of Roma and Sinti in the OSCE Area* (OSCE, 2000), <http://www.osce.org/hcmm/documents/reports>, accessed 15 September 2007. United Nations bodies also acknowledge the poor condition of the Roma in the CEECs. It is mostly clear from the Concluding Observations of the Human Rights Committee regarding the Reports submitted by State parties under Art. 40 CCPR. *E.g.* UNHRC Concluding Observations: Hungary, 19/04/2002. CCPR/CO/74/HUN, para 7.

[64] *E.g.* 2004 Strategy Paper, 11; 1998 Romanian Report.

level remains a challenge'.[65] These developments are very well documented and, most importantly, acknowledged by the Commission and thus did not pass unnoticed in the context of enlargement.

The Czech Citizenship law of 1993 and the Commission's reaction

The situation for a huge number of Czech Roma was particularly poor because they were not only discriminated against in virtually all spheres of life, but were also deprived of formal status as citizens of the Czech Republic. The Czech citizenship law was criticised by academics as 'entirely unsuitable for the Roma'.[66] It appeared clear to everyone concerned with Roma rights issues what the law was about: preventing the Roma from getting Czech citizenship in the aftermath of the split of the Czechoslovak Federation. While it is often stated that 'the intent of the citizenship law remains an open question',[67] it is possible to argue that the intent of the Czech legislator was clearer than some would like to present. Based on the Czech government reports, Šiklová and Miklušáková argue that the authorities were aware of the exclusionary character of the legislation.[68] Warnke simply states that 'the law was designed to indirectly preclude Roma from becoming citizens'.[69] In excluding the Roma, the Czech government was also acting in line with the popular sentiment that supported the denial of citizenship for the Roma.[70]

In the Opinion on the Czech Republic's application for membership of the European Union the Commission stated that there was a 'problem of discrimination affecting the Roma, notably through the operation of the citizenship law'.[71] At the same time, the Commission, having recognised the importance of this piece of legislation for the protection of Roma in the Opinion, downgraded the importance of the issue in later Reports, referring to the Roma and other groups of former Czechoslovak citizens in 1998, as 'former Czechoslovak' citizens in 1999 and dropping the assessment of this issue later. At the same time, as scholarly assessments demonstrate, the law primarily targeted the Roma and thus was of primordial importance for minority rights protection.

The general rule of international law does not usually make a link between the acquisition of the citizenship of a successor state and putting certain criteria on such an acquisition.[72] In the Czech situation,[73] however, the personal status of all the citizens of the Federation was more complicated than in some other states, being a combination of two statuses. Based on the Soviet legal principle of internationalism,[74] *i. e.* the unity of

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[65] 1999 Czech Report, 17.
[66] Šiklová and Miklušáková, n 61 above. *See also* M.D. Marden, 'Return to Europe? The Czech Republic and the EU's Influence on Its Treatment of Roma', (2004) 37 *Vand. J. Transnat'l L.*, 1182, 1188; Banach, n 43 above, 377; Warnke, n 4 above, 356–358; V. Dobal, A. Nedomová, M. Pspíšil, A. Sulitka and I. Vejnerová, *Report on the Situation of the Romani Community in the Czech Republic*, 1999, <http://www.cts.cuni.cz/~dobal/report/index.htm>, accessed 15 September 2007; Šiklová and Miklušáková, n 61 above.
[67] Marden, n 66 above, 1189.
[68] Šiklová and Miklušáková, n 61 above.
[69] Warnke, n 4 above, 357.
[70] Haun, n 44 above, 156.
[71] Czech Opinion, 20.
[72] M.N. Shaw, *International Law* (5th ed., CUP, 2003), 907 *et seq.*; I. Brownlie, *Principles of Public International Law* (6th ed., OUP, 2003), 627 *et seq*.
[73] The Czech Republic alongside with Slovakia are successor states to the Czechoslovak Federal Republic (ČSFR), formed after the collapse of the totalitarian regime of the Czechoslovak Socialist Republic (ČSSR). ČSFR was dissolved on 1 January 1993.
[74] *E. g.* S.I. Rusinova, 'Zakon o grazhdanstve SSSR', [1980] 1 *Pravovedenije*, 3.

two citizenships: the Federal (Czechoslovak)[75] one and the national one (Czech or Slovak).[76]

Before the dissolution of the Federation such unity of citizenships was no more than a legal fiction; even more so once it is considered in the light of the principle of equality of citizenships, which prohibited the citizens of Slovakia or Czechia, as parts of the Czechoslovak Federation to have less (or more) rights than the Czechoslovak citizens. As a result of such legal arrangement, a number of citizens of the Czechoslovak Federation *de facto* permanently living in the Czech Republic officially had Slovak national citizenship. The same applied to the Czechs residing in Slovakia.

This legal fiction was of special importance for the Czechoslovak Roma. Since the Roma previously inhabiting the Czech regions were almost totally wiped out by the Holocaust alongside with the Jews of the Protectorate Bohemia and Moravia, right after the war the Czechoslovak authorities, aiming to solve 'a Roma problem', adopted the 'Roma dispersal and transfer scheme',[77] according to which the Roma from the Slovak regions (which were not part of the *Reichsprotektorat* and thus were less affected by the holocaust) were forcibly relocated to the Czech lands. The goal of the Czech governmental program was the achievement of equal Roma dispersal all over the country to make the percentage of Roma living in one place as low as possible.[78]

At the moment of the Czechoslovak dissolution, the previously fictitious Slovak or Czech citizenship (which even *de jure* could not exist without the Czechoslovak nationality) suddenly gained importance. While a number of Czechs residing in Slovakia got Slovak citizenship by declaration and were allowed to keep their Czech nationality, the newly formed Czech Republic chose a different solution. According to the Czech law, all those who were living in the Czech Republic at the time of the dissolution of the Federation and were not in possession of the (*de facto* fictitious) Czech citizenship alongside their Czechoslovak nationality (which was abolished as of the time of the dissolution of the Federation) had to apply for Czech citizenship and meet three main criteria (Sec. 18 of the Law), including:

1. Permanent residence in the Czech Republic at the time of dissolution of Czechoslovakia;
2. A clean criminal record for the previous five years (regardless of the gravity of the crime);
3. Fluency in the Czech language.

All those who resided in the Czech Republic but were not in possession of Czech citizenship and could not meet these criteria were automatically considered Slovaks. Thus, ironically, the law assigned Slovak nationality to a number of people who, being born in the Czech Republic, might have never been to Slovakia and did not speak any

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[75] Czechoslovak Law No. 165/1968 *Sb*.
[76] Czechoslovak Law No. 39/1969 *Sb*. On this legal construction *see* Šiklová and Miklušáková, n 61 above.
[77] Brown, n 62 above, 302.
[78] OSCE HCNM, n 63 above, 21. The Roma presence in the Czech lands should not be taken uniquely as an evidence of the success of the relocation programme, but as a result of working of a number of other factors, such as the high level of industrial development of the Czech lands (especially compared with Slovakia), and the natural willingness of Roma to migrate. *See inter alia* W. Guy, 'The Czech Lands and Slovakia: Another false dawn?' in W. Guy (ed.), *Between past and future: The Roma of Central and Eastern Europe* (University of Hertfordshire Press, 2001); W. Guy, 'Ways of Looking at Roms: The Case of Czechoslovakia' in F.Rehfisch, (ed.), *Gypsies, Tinkers and other Travellers* (Academic Press, 1975); O. Ulč, 'Communist national minority policy: The case of the Gypsies in Czechoslovakia', (1969) 20(4) *Soviet Studies*, 421. I am grateful for this insight to the first *JCER* reviewer of this paper.

Slovak.[79] The Commission reported that the Czech government considered such persons 'as Slovak nationals despite their birth or life-long residence on Czech territory'.[80] All three conditions were discriminatory against the Roma community in the Czech Republic.

The criterion of permanent residence was interpreted by the Czech authorities in a very technical way, the establishment of the fact of such residence being linked to the status of the housing the claimant occupied. This automatically excluded vast numbers of Roma from the possibility to apply for Czech citizenship because their housing was usually considered to be 'temporary'. The clean criminal record requirement basically amounted to a disproportionate punishment of vast numbers of people for the crime committed by imposing a new penalty *ex post facto*.[81] Moreover, considering that the majority of the Roma, excluded from the possibility to work and study because of prejudice and school segregation, had no ability to find suitable employment and, consequently, were overrepresented in the countries prisons, the second citizenship requirement was also a blow to the Roma community. The proficiency in the Czech language was another obstacle for the Roma to get their Czech citizenship. Many Roma (only 0.1% of the group have a university degree), use only Romani languages on a daily basis and are often illiterate in Czech. This illiteracy, however, does not necessarily make them Slovaks. Moreover, it is largely a consequence of the school segregation practices in the Czech Republic, where Roma children unable to speak Czech were often placed in schools for mentally handicapped children – a practice the European Court of Human Rights have short-sightedly refused to condemn.[82] In other words, all the three requirements contained in the Czech citizenship law constituted obstacles, preventing the Roma from acquiring Czech documents.

The first changes in the citizenship law preceded the release of the Commission's Opinion on the Czech Republic's application for membership of the European Union (1997). Under pressure from numerous critics, the clean criminal record requirement was lifted in 1996. At the same time, given the discriminatory character of the two remaining requirements, there was a wide consensus among the scholars and human rights organisations that this amendment did not do enough to remedy the situation related to Roma statelessness in the Czech Republic. This issue had the potential to gain unprecedented importance in the pre-accession process. However, it did not happen this way.

Discussing the citizenship issue in the Opinion, the Commission only mentioned one area of discrimination out of the three present at that time.[83] This mention came under the auspices of the civil and political rights assessment, not minority rights, thus ignoring the core of the problem at issue, *i.e.* the fact that the law in question clearly targeted a particularly vulnerable minority group. Moreover, the same Opinion informed the reader that the law was amended in 1996, thus creating the impression that the problem had

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[79] Šiklová and Miklušáková, n 61 above.
[80] Czech Opinion, 14.
[81] Dobal *et al*., n 66 above, para 3.1.2.
[82] ECt.HR *D.H. et al.* v. *The Czech Republic* [2006] Appl. No. 57325/00. for discussion *see* C. Cahn, 'The Elephant in the Room: On Not Tackling Systemic Racial Discrimination at the European Court of Human Rights', [2006] 4 *Eur. Anti-Discrimination L. Rev.*, <http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06lawrev4_en.pdf>, accessed 15 September 2007. Generally on the ECt.HR case law regarding Roma rights protection *see* K. Henrard, 'The European Convention on Human Rights and the Protection of the Roma as a Controversial Case of Cultural Diversity', [2004] 5 *EDAP*, 1, <http://www.eurac.edu/documents/edap/2004_edap05.pdf>, accessed 15 September 2007.
[83] Czech Opinion, 14.

been solved by the time the Opinion was released.[84] The international rules of the succession of states, however, which prohibit instances where 'people who have lived continuously in the territory becom[e] aliens or stateless persons',[85] theoretically offered the Commission a way to return to the assessment of this question in the future. The Commission did not use this possibility, unwilling to make a clear connection between the solution of this problem and the prospects of Czech accession to the EU. Although already in its 1998 Report on the Czech Republic's application for membership of the European Union the Commission returned to the Czech citizenship issue, it did not broaden the scope of its assessment of the exclusionary naturalisation practices, being confined to one area of exclusion. The Commission did not go further than stating that the law did not work properly. At the same time, the inclusion of a broadened scope of persons affected by the law into the Report (the Commission named 'Roma, children in foster homes and persons in mental institutions')[86] seemed to be regarded as sufficient justification for the continuation of assessment of this issue in the civil and political rights sections of the Reports, without moving it to the minority protection section of the Copenhagen related documents. Moreover, the Commission, appealing to the suggestion of the UNHCR, made a recommendation to broaden the time-span of the period of option, in order to give all those who passed the previous deadline the opportunity to apply for Czech citizenship.[87] Such an approach can hardly be characterised as constructive, since new deadlines were clearly unable to change the situation with the conditions imposed by the Czech government. The 1999 Report, just as the Commission's Opinion on the Czech Republic's application for membership of the European Union, did not contain any criticism of the law at all, informing the reader that the law was amended and the clean criminal record requirement was dropped.[88] The Commission did not make any further comments on this issue. It is absolutely unclear how the fact that the clean criminal record requirement was dropped could solve the problems of the groups, negatively affected by the law and outlined in the 1998 Report, especially children in foster homes and people in the mental institutions. The 2000 Report did not provide any new information regarding the Czech citizenship law and all further Reports are silent on this issue. The Commission clearly distanced itself from assessing whether the amendment passed in 1999 was actually functional and whether it could *de facto* guarantee the citizenship status to all those excluded from it by the controversial law. While the amendment proved workable,[89] the question 'why the change occurred?' is not easy to answer.[90] What is absolutely clear, however, is that the EU and the Commission acting as the motor of the pre-accession process were not among the main promoters of change. Given the importance of the issue and the number of tools at the Commission's disposal it is truly embarrassing that the Commission shied away from playing a leading role in the promotion of reform in this sphere.

The issue of Czech citizenship for the Roma was never included among the priorities of the APs with the Czech Republic. This is a sign of its marginal importance for the success of the pre-accession and of the absence of Union pressure on the Czech Republic, since only the non-compliance of a candidate country with the reform priorities included in an Accession Partnership could formally allow the Commission to take definitive steps in

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[84] *ibid.*
[85] *ibid.*
[86] 1998 Czech Report, 10.
[87] No reference was made, for example to the Human Rights Watch, recommending granting citizenship automatically to all the former citizens of Czechoslovakia residing in the Czech Republic.
[88] 1999 Czech Report, 15. The Minority Rights section of the Report also contains a positive assessment of the amendment.
[89] Linde, n 3 above, 343.
[90] *ibid.*

the light of Article 4 of the Regulation 622/98 aimed at pushing the candidate country towards compliance with the Copenhagen criteria.

The fact that the law was changed at all can be primarily attributed to the actions of Canada and the UK[91] and not the European Commission. Receiving considerable numbers of Roma refugees, these countries pressured the Czech government to effectively change the situation with Roma rights protection. Canada introduced visas for Czech citizens to deal with the mass inflow of Roma asylum-seekers. When the Czech government acted, it was responding to such actions.[92]

The Commission certainly did not use the potential the pre-accession strategy possessed to solve this problem. First of all, it did not recognise the complexity of the problem, focusing on one minor issue and, secondly, it downgraded a largely minority rights problem (discrimination targeting one ethnic group), appealing to the generally negative effects of the law for 'former Czechoslovak citizens', which allowed the Commission not to deal with the problem among the issues of minority protection at all.

It can be suggested that the Commission did not deal with the Czech citizenship law issue in the minority rights sections of the Reports because it was unwilling to allow any parallels to be drawn between its position concerning the Czech citizenship law, where it advocated a change in the grounds of naturalisation, and the position it took *vis-à-vis* Estonian and Latvian citizenship legislation where it *de facto* supported the candidate countries in their exclusionary practices, targeting the malfunctioning of the naturalisation mechanisms, instead of attacking the grounds of granting citizenship, as it did, albeit to a minimal extent, in the Czech case.[93] Since such a differentiation is contrary to the principles of the pre-accession reporting and goes against the very essence of the pre-accession conditionality principle, it seems that the Commission was trying to present essentially similar issues in different light, which would justify their inclusion into different sections of the Reports and, consequently, the application to them of different approaches.

Conclusion

From the Commission's pre-accession assessment of the Czech citizenship law the marginality of the citizenship issue in the context of the Czech Republic's progress towards accession is absolutely clear. Unlike, for instance, taking on board the *acquis communautaire*, solving the citizenship issue played only an auxiliary role in the course of the whole duration of Czech preparation for the membership of the Union. The Commission did not only fail to target all the key issues harmful for the naturalisation of the Roma minority in the Czech Republic. More importantly, it failed to pay due attention to the essence of the problem, disregarding the underlying minority protection problems inherent in the discriminatory provisions of the Czech citizenship law. By doing this, the Commission distinguished the issue of the statelessness of the Czech Roma from the issue of the statelessness among the Russian minorities in the Baltic States. This position of the Commission can be explained by two considerations.

The first would suggest that since the Commission could not openly apply different minority protection standards to different minorities in candidate countries finding

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[91] Banach, n 43 above, 377.
[92] E. Sobotka, 'Crusts from the Table: Policy Formation towards the Roma in the Czech Republic and Slovakia', [2001] 2-3 *Roma Rights Quarterly*, <http://www.errc.org/cikk.php?cikk=1698>, accessed 15 September 2007. *Cf.* Linde, n 3 above, *passim*.
[93] On the discussion of the Commission's position concerning Estonian and Latvian citizenship legislation *see* Kochenov, n 14 above.

themselves in a similar situation (which would run counter the very essence of the pre-accession conditionality principle as formulated by the European Council), it was unwilling to regard the Russian statelessness in Latvia and Estonia as similar to the Roma statelessness in the Czech Republic. Very well aware of the principled position taken by the two Baltic states unwilling to acknowledge the necessity of building states on somewhat more inclusive principles that would entail the granting of citizenship rights to the persons belonging to the 'Russian speaking' minorities, the Commission, although actively engaged in the minority rights protection in the Baltics, failed to take an active stand *vis-à-vis* the very grounds of naturalisation used by the two countries and was unwilling to condemn their ethnocentric state models. As a consequence, the whole pre-accession promotion of more inclusive naturalisation in Latvia and Estonia led to almost embarrassing results coming nowhere near the solution of the minority statelessness problem. The total inability of the Commission to solve the statelessness issue was due to the fact that it did not connect the successes in improving the naturalisation rates in Latvia and Estonia with their EU membership prospects. Knowing that they could become full Member States without resolving the outstanding issues of institutionalised discrimination against their ethnic minorities, the two Baltic States did little with respect to the promotion of an inclusive citizenship policy. The Commission, unwilling to push them towards changing their attitude towards discrimination is (together with the EU-15) to blame for this failure of the pre-accession.

Unlike what happened in the Baltic States, the Czech citizenship issue was regarded by the Commission differently. Although equally lacking in success, it principally differed from the Commission's pre-accession activities in Latvia and Estonia, as the Commission started the pre-accession assessment by approving the change in the grounds of naturalisation. By welcoming the removal of the criminal record requirement in 1996 the Commission – albeit unwillingly – actually looked into the core of the problem – something it never did in the context of statelessness in Latvia and Estonia, where it never questioned the underlying rationale of the naturalisation policy. If the approach targeting the core conditions of naturalisation were to be applied to the two Baltic States' naturalisation policies, the discriminatory character of their citizenship laws would be much clearer, making them less attractive candidates for the membership of the European Union. The principal difference in the Commission's approach came down to, on the one hand, silently approving the treatment of the Russian minorities in Latvia and Estonia as unwanted 'foreigners' in need of naturalisation even in cases where they were born and spent the whole of their lives in those states, helping the two Baltic candidate countries to make their naturalisation procedures more functional as opposed to, on the other hand, active involvement in condemning some naturalisation grounds in place in the Czech Republic that made more difficult, if not impossible, the acquisition of citizenship by the members of minority groups who were often born and spent their whole lives in the Czech Republic. Targeting the conduct of naturalisation in the Baltic States is very different from targeting the *grounds* of naturalisation in the Czech Republic. To justify this difference in approach one of the issues had to be assessed as part of the civil and political rights sections of the Copenhagen-related documents, not as part of minority protection proper.

In the end the Commission's pre-accession involvement in the issues of naturalisation both in the Czech case and in the case of the two Baltic countries is difficult to characterise as successful. Such an outcome can also be partly explained by the Community's general lack of powers in the nationality domain. Although a certain fusion of nationality legislation in the Member States can be recorded, the direct influence of the Union in this process is marginal and is mostly related to the prohibition for the Member States to act in disregard of Community law, as outlined by the ECJ in *Micheletti*. In such a setting, the Member States were eager to guard their sovereign rights in the domain of nationality regulation and reluctant to allow the Commission too much

freedom in this field – even in the course of the pre-accession, where *de jure* it was not restrained by any competence limitations whatsoever, theoretically able to solve any statelessness problem effectively by making use of the legal and political tools of pre-accession conditionality.

The fact that the principle of the pre-accession conditionality has so far not been effectively applied to solve the outstanding issues of statelessness among minorities does not mean, however, that the potential for it to be applied in this way is absent. In the course of the preparation for future expansions, the EU is likely to face a number of minority protection issues where its intervention will be necessary in order not to repeat the mistakes of the past. The Community should not shy away from actually solving minority protection problems instead of simply discussing some of them in the context of the pre-accession process.

To ensure genuine protection of ethnic minorities in prospective Member States the EU has to alter its approach to the issues of ethnicity-based exclusion from citizenship in the course of future expansions of the Union.

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Indivisible Partners or Enduring Combatants? Divisions & Triumphs in the EU-Australian Relationship

Luke Raffin

Abstract

Casting the spotlight over a complex and dynamic relationship, this article seeks to diagnose the state of relations between the European Union and Australia by contrasting the sources of tension with the forces of unity in the relationship. After illuminating the substantial differences between the EU and Australia in the political, military and economic spheres, the article asserts that the Common Agricultural Policy ('CAP') has disproportionately influenced the EU-Australia dialogue and — like the Howard Government's propensity to bilateralism — needlessly impeded the advancement of relations. The impact of bilateral relations with the United States and the increasingly contentious challenges posed by global climate change have threatened to destabilise the bond between Brussels and Canberra. However, the article insists that the destructive potential of CAP-related disagreement is dissipating. Rather, debates over agriculture in the EU-Australia dialogue have been emasculated by rapidly intensifying social, political and cultural integration. Moreover, the development of Australia's relationships with its Asian neighbours promises to optimise Australian engagement with Europe. After carefully weighing these competing factors, the article concludes that — despite the transitory phases of discord — the future for the EU-Australia relationship is bright.

SINCE IT WAS FORMED IN THE AFTERMATH OF THE SECOND WORLD WAR, the European Union has shared a roller coaster ride with Australia through the vicissitudes of their relationship. In light of the volatility of their engagement, are the EU and Australia really divided by a 'trans-hemispheric rift', a 'gulf of misunderstanding' (Murray 2005: 6–7), or are these simply superficial quarrels that inevitably emerge from an intimate relationship? This article will juxtapose the divisions that undermine the EU-Australian relationship with the factors that strengthen the partnership.

Firstly, it is observed that Australia and the EU are separated by their inequality. After examining the divisive role of the Common Agricultural Policy ('CAP') (Murray 2002a: 162), the article will contend that Australia's preoccupation with European protectionism has inhibited the broadening of the scope of their engagement. The bilateral lens through which the Howard Government prefers to view Europe has hindered the advancement of relations with the EU through a regionalist paradigm. Furthermore, Canberra's close relationship with the United States, global environmental policy and the failure to secure a Framework Agreement demonstrates the contemporary variation between Australia and the EU.

Despite these weighty differences, this article maintains that the factors uniting Australia and the EU ultimately prevail. The CAP's ability to undermine the relationship is lessening. Beyond agriculture, Australia and the EU have forged a lengthy record of trade cooperation. Social, political and cultural integration is evolving, diversifying and intensifying. Australia's increasing involvement in Asia not only begins to surmount the

ISSN 1815-347X online – Raffin, L. (2007) 'Indivisible Partners or Enduring Combatants? Divisions and Triumphs in the EU-Australian Relationship', *Journal of Contemporary European Research*, Vol. 3, No. 2, pp. 141-160.

obstacle of exclusion from regional citizenship but also enhances Australia's capacity to engage with Europe. Ultimately, the intrinsic bonds uniting the EU and Australia outweigh the divisions in their relationship. Like most partnerships, conflict can be frequent, but there is much more that unites Australia and the EU than divides them.

The Divisions of Inequality

On a fundamental level, Australia and Europe are divided by their differing political and economic and influence. As Murray accurately observes, the EU-Australia relationship is 'an asymmetrical one'. As a 'middle power', Australia is 'low on the hierarchy of states' (Murray *et al.* 2002: 395; Cooper *et al.* 1993; Coleman and Underhill 1998: 9). Its resilient but medium-sized economy, limited military capacity and moderate political power relegates Australia down the list of the EU's priorities (Murray 2002b: 69; Piening 1997: 163). Furthermore, Australia's wealth, location and comparative stability have not catapulted it into the realm of geopolitical problems that attract the interest of Brussels and its active external policy (Ludlow 2001).

Conversely, the EU is a global power. Differentiating itself in an age of American unipolarity, the 'metrosexual' EU has been acclaimed as the era's 'soft power' (Murray 2005; Khanna 2004; Rifkin 2004; Padoa-Schioppa 2004; Ginsberg 1999: 432). Additionally, the economic and political might of the EU is unambiguously clear (Krauthammer 1991: 17). In 1999, the European market was worth more than AUS$13 trillion (Mazzocchi 2003: 34). The EU is the world's largest trader, representing more than 20% of international trade (Murray 1997: 230). The importance of such a considerable economic union is undeniable; the EU has been Australia's primary economic partner for the past ten years, with total merchandise trade for 2004 worth AUS$46.6 billion (€27.6 billion) (Goldsworthy 1997: 29; Howard 2005: 78). The EU is Australia's largest overseas market for services exports, valued at AUS$7.4 billion (€4.4 billion) in 2004, much of this in travel, transportation and education sectors. Australia's merchandise exports to the EU in 2004 totalled AUS$13.6 billion (€8.1 billion) (Howard 2005: 78). EU investment provides an estimated 350,000 jobs in Australia (Lamy 2002a: 1). Furthermore, the EU is Australia's chief investor, providing 33% of total foreign investment in Australia (McDougall 1998: 108). The EU is the second major investment location for Australian funds invested overseas (Mazzocchi 2003: 34–5; Kenyon *et al.* 2005: 56; DFAT 2003a, 2003b).

Politically, the EU exercises vast power through its bilateral and multilateral engagement. In addition to holding two permanent seats in the United Nations Security Council (Cienski 2004: 8), Europe's relevance is exemplified by its capacity to formulate often popular positions on global challenges. From the 2003 Iraq War and the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*[1] to the *Rome Statute of the International Criminal Court*[2] and the *Comprehensive Test Ban Treaty*, the success of the EU's strategies has varied but its ability to articulate widespread international opinion has not. Europe's invaluable contribution to the war on terror has never been more important.

But the pace of the EU's advancement must not blur recognition of its weaknesses. The US-led invasion of Iraq polarised the continent, temporarily suspending the progress of a Common Foreign and Security Policy (Layne 2004: 48). The recent failure of the Constitution (Bildt 2005: 17), the seemingly problematic interaction of a common monetary policy with varied domestic economic conditions and the contentious question of Turkish membership have obstructed the EU's advancement (Atkins 2005: 8).

[1] Opened for signature 16 March 1998, 37 ILM 22.
[2] Opened for signature 17 July 1998, 37 ILM 999 (1998) (entered into force 1 July 2002).

These agitations are pertinent, but they dwarf in comparison with the powerful prospect of the EU's future.

CAP: Constant Agricultural Problem?

The CAP represents the most persistent catalyst for conflict in the EU-Australia relationship. Since the *Treaty Establishing the European Community* articulated the fundamental tenets of the policy,[3] enshrining protectionism in the *acquis communautaire*, agriculture has remained the 'defining issue' of the relationship (Lamy 2002a: 2, 5; Benvenuti 1998: 58; Davison 1991: 40). Through its internal price controls and barriers to agricultural imports, the CAP has severely constrained Australian access to European markets (Burnett 1983: 111). Furthermore, the CAP's pricing structures have generated 'obscene levels of overproduction', depressing global markets and prices and exacerbating Australia's trade performance outside Europe (Dinan 1999: 341; Miller 1983: 164).

Australia's interests have 'collided with those of the [EU] precisely where it is most protectionist' (Richardson 1992: 212). Australia has the second-lowest levels of agricultural support and protection in the industrialised world (OECD 2002: 11). Australia's reliance on the United Kingdom as a principal export destination for agricultural produce renders it vulnerable to the adverse effects of European protectionism. In stark contrast, the EU finances the highest level of trade-distorting farm support in the world. Stemming from a commitment to post-War reconstruction, the CAP has dominated the EU's internal activities and its external relations because it is 'basic to its unity and fundamental objectives' (Tracy 1989: 349). Australia advocates free trade to maximise its exporting potential while the EU settles for incremental agricultural reform (Bell 1997: 204). However, Australia's preoccupation with the CAP cannot obfuscate reality: the EU is the world's principal importer of agricultural produce and is Australia's second largest market for primary produce exports. The top six importing Member States annually consume almost $3 billion of Australian agricultural produce (Sharpston 2002: 29).

A Point of (Un)Diplomatic Difference

Irrespective of the merits of its position, the prosecution of Australia's opposition to the CAP has often enlarged the gulf between the EU and Australia. Sympathetic to a powerful domestic agricultural lobby (Burnett 1983: 2), the Fraser Government triggered the CAP's divisive influence on the relationship. Critics assert that the 'extremely aggressive tactics and style of the Government's diplomacy' rendered the Fraser years 'simply counterproductive' (Burnett 1983: 221; Benvenuti 1999: 181). Whilst the Fraser Government's attachment of 'a disproportionate importance to the agricultural question' was understandable because of its predominance in the Australian economy (Benvenuti 1999: 182–3), the diplomatic handling of the disagreement 'merely impaired the already unsatisfactory relations with the EEC' (Renouf 1983: 330).

Signalling an unprecedented activism in international economic diplomacy (Kenyon *et al*. 2005: 60), the more conciliatory approach of the Hawke and Keating governments furnished limited but encouraging success. Through the *Andriessen Agreement*, the EU indicated some willingness to submit its contentious policy to the rigour of the General Agreement on Tariffs and Trade negotiations (Murray 2005: 22). Additionally, Australia assumed leadership of the Cairns Group — a coalition of agricultural exporting nations

[3] Opened for signature on 25 March 1957, 298 UNTS 11 (entered into force 1 January 1958).

that became a coordinated liberalising force in multilateral trade for a (Capling 2002: 153–70; Gallagher 1988: 2; Groom 1989: 3). The dialogue that emerged from this period led to a considerable broadening of relations between the EU and Australia (Elijah *et al.* 2000).

Despite this progress, the CAP continues to strain the relationship. Since serving as Special EC Trade Minister in the Fraser Government at a time when Australia began to recognise the severity of the CAP's implications, John Howard has been 'unswerving in his attacks on EU protectionism' (Burnett 1983: 112–3; Howard 2003: 10–11; Murray 2005: 6). According to the Prime Minister;

> I have spent a large part of my political life denigrating, quite rightly, with some passion, the rotten anti-Australian policies of the EU that have done such immense damage to the agricultural industries of Australia and represent one of the high water marks of world trading hypocrisy (Kelly 1998: 13).

Recently, the EU and Australia have clashed over the EU's push for multilateral protection of geographical indications beyond the provisions on wine in the *TRIPS Agreement* (Vaile 2003: 2); the EU's campaign to gain greater WTO recognition of the 'precautionary principle'; the EU's Everything But Arms program (Lamy 2002a: 4); Canberra's endorsement of Uruguayan Carlos Perez del Castillo to become the next Director-General of the WTO (Murphy 2005: 6); the EU's sugar policies (European Commission 2005a: 3); the imposition of wheat subsidies (Sutherland 2005: 21); and the application of Australia's quarantine regime to the EU (European Commission 2003a: 1). The ongoing battles in the field of agriculture continue to inflict scars on the EU-Australia relationship.

Although the motivations of Australia's unrelenting opposition to the CAP are understandable, its often confrontational disposition has hamstrung the broader development of meaningful EU-Australia relations. Rather than dismissing Europe as a protectionist and domineering 'fortress' (Murray 2005: 8; Doody 2003), concentrating on the opportunities that the EU presents, could yield momentous benefits. The EU represents an unrivalled economic bloc with 475 million consumers, distinguished by 'transparency and porous borders in economic transactions' (Murray 2005: 69). As Kenyon and Kunkel maintain, '[j]ust as Australia works to ensure that its trade relations with the US and Japan are not dominated by differences over agriculture, a similar approach could best serve its multilateral trade relationship with the EU' (Kenyon *et al.* 2005: 67). The balance of the relationship must revert away from reluctant indifference toward embracing Europe.

Seeing the Same World, But Differently

As agricultural bickering persists, Australia and the EU also diverge in their varying views of the world. Although a cohesive EU increasingly acts internationally through a regionalist paradigm, the Prime Minister is intent on viewing Europe as 27 separate nation states. Howard, who has visited Brussels only once and Britain ten times as Prime Minister, is reluctant to embrace a unilateral Europe (Taylor 2003a: 30). Howard maintains that 'it is a mistake to see relations with all the countries of the European Union simply in the context of the European Union' (Barker 2002a: 62). Instead, he favours bilateral engagement with the individual member states of the EU (Barker 2002a: 62). From Howard's perspective, multilateralism is worthwhile only if it brings 'concrete gains' to Australia, but not if it is simply part of the 'big picture' ideology (McDougall 1998: 142).

Importantly, a subtle yet ominous divergence in perspective between the Prime Minister and the Foreign Minister, Alexander Downer, has been detected (Barker 2002a: 62). In

2002, Downer acknowledged that 'we need to see Europe through a new prism, not just through the United Kingdom and traditional bilateral relationships' (Barker 2002: 62). But Downer's view has been eclipsed by the Department of Foreign Affairs and Trade's White Paper, *Advancing the National Interest*, which concludes that '[b]ilateral relations are the bedrock of Australia's European engagement' (DFAT 2003c: 99).

Whilst state-to-state engagement is an invaluable instrument in the prosecution of Australia's foreign policy, a failure to grasp the political reality of an increasingly unified EU will continue to restrict Australia's future in Europe (Murray 2005: 168). Through the European Commission, the EU increasingly acts unilaterally across a spectrum of policy areas (Murray 2005: 53; McCormick 2005: 113). This is evidenced in Australia's economic engagement with western Europe, which is conducted 'as much, if not more, with the European Union as with individual countries themselves' (Evans *et al.* 1995: 309). The freedom of member states is constrained by the supremacy of the Commission and EU legislation (Murray 2005: 62; Standoltz *et al.* 1998). Currently, Australia's engagement with Europe portrays an inadequate understanding of the EU, its integration process and its external affairs (Murray 2005: 69). This is partly manifest in the Howard Government's focus on the UK (Howard 1997), shared by key business and political stakeholders (Murray 2003), which has diminished the relevance of the rest of the EU for Australia (Murray 2005: 31; Murray 2002a: 162). Groom denounces the 'collective amnesia concerning Europe in otherwise well-informed circles in Australia' as

> a debilitating disease … It creates a lethargy where there is opportunity. It is blind to potential difficulties. It squanders a still-important reservoir of good will. Above all, it is a denial of identity. No group can be free until it recognises and comes to term with its past, whether it likes it or not (Groom 1989: 13).

As long as the Australian political and business community clings to an outdated view of Europe, the relationship will fail to realise its full potential.

The Rise of the Trans-Pacific Alliance

The Howard Government's relationship with the United States, seemingly irreconcilable disagreement with the EU over global environmental policy and the failure of the *Framework Agreement* constitute some of the contemporary limitations in the relationship. A juxtaposition of the relations between the United States and Australia with those between Canberra and Brussels highlights the tensions undermining the EU-Australia relationship (DFAT 1994: 95). Howard repeatedly boasts that the US-Australian 'relationship has never been stronger or closer' (Howard 2003: 6; Howard 2004: 7). The Coalition vigorously supported the US-led invasion of Iraq, which represented the nadir of transatlantic relations. As the world grappled with the horrific attacks on the World Trade Center on September 11, the Prime Minister resolutely declared Australia's commitment to the war on terror (Dodson 2001: 2). Significantly, the Prime Minister has also recently endorsed the Bush administration's missile defence system and Washington's contentious plan to democratically transform the Middle East (Howard 2005: 4; Woolcott 2004: 143).

However, the EU has advocated a more nuanced approach. The Free Trade Agreement has intensified the integration of the American and Australian economies (Walker 2004: 1), but trade disputes over steel tariffs and soft loans to airlines have fuelled transatlantic tensions (Afilalo 2002: 749). In stark contrast to his vehement denigration of the CAP, the Prime Minister has been subdued in response to the protectionist aspects of the Bush administration's agricultural policy (Davis 2002: 1; Parkinson 2002: 11). Whilst the

Government is not entirely uncritical in its attitude to Washington,[4] divisions between the EU and Australia are amplified by the warmth of trans-Pacific relations.

An Uncooperative Environment

The public dispute between the EU and Australia over the *Kyoto Protocol* belies the considerable agreement between the two jurisdictions over the most effective responses to contemporary environmental challenges. The recent history of environmental policy in the EU and Australia is strikingly similar. In both jurisdictions, lawmakers shifted political values to prioritise quality of life and protection of the environment in the 1960s. Green political movements flourished during the 1970s. As Grant and Papadikis assert, green political issues have since been predominant in electoral contests. Consequently, major political parties in Europe and Australia have often moved to embrace the green political agenda. Governments and opposition parties have rapidly embraced concepts of 'sustainable development' and 'ecological modernisation'. Recently, the implementation of neo-liberal market-based instruments to address environmental problems have crystallised in both the EU and Australia (Grant and Papadikis 2004: 287).

Moreover, there is broad agreement between the EU and Australia about many of the central tenets of the contemporary environmental debate. They agree that climate change is a problem; they signed the *UN Framework Convention on Climate Change*. Both the EU and Australia accept the precautionary principle; they share similar ideological constructs and material practices for dealing with emissions (Grant and Papadikis 2004: 287; Meadowcroft 2000; Jordan *et al*. 2003: 202). Despite this apparently 'formidable' commitment to the environment (Longo 1997: 127), Australia has opposed numerous global environmental initiatives that the EU has advocated (Lenschow 2004: 156. On the reasons for the EU's leadership on this issue, see Baker 2000: 304; Haigh 1996; Beetham and Lord 1998). Largely motivated by the fear that ratification would adversely impact the economy, employment and investment (Grant and Papadikis 2004: 283; Oxley 2002a: 11; Hill 1996: 3), Australia has consistently opposed the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*.[5]

The extensive similarities between the EU and Australia over environmental policy have been overshadowed by their public disagreement over *Kyoto*. According to Murray, this rejection 'is a type of Cold War between the EU and Australia' (Murray 2005: 156). In the wake of Australia's rejection of *Kyoto*, EU Environment Commissioner Ritt Bjerregaard asserted that Australia had made a 'mistake' and had 'made a misleading case and "got away with it", and that this would not be forgotten' (Hamilton 2001: 89). Beyond *Kyoto*, the EU and Australia have collided over the *Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal*[6] and the *Cartagena Biosafety Protocol to the Biodiversity Convention*.[7]

Rejecting *Kyoto's* failure to fence developing countries within the paramaters of emissions constraints (see Grant and Papadikis 2004: 284; Paterson 1996: 69; Oxley 2002b: 50) and opposed to the use of emissions trading, the Clean Development Mechanism and

[4] Recently, the Coalition defied US efforts to dissuade the European Union from lifting its 15-year arms embargo on China, which Washington fears will transform the balance of power in the Taiwan Strait. According to Sheridan, this was 'the most serious strategic disagreement between Washington and Canberra in recent years': Greg Sheridan, 'PM Defies Bush over China Arms', in *The Australian*, Sydney, 12 February 2005, p. 1.
[5] Opened for signature 16 March 1998, 37 ILM 22.
[6] Opened for signature 22 March 1989, 1673 UNTS 57 (entered into force 5 May 1992).
[7] Opened for signature 29 January 2000, 5 ILM 39.

the operation of punitive measures (see Hillman 2001), Australia united with other opponents of the *Kyoto* model (including China, India, Japan, South Korea and the US) to form the Asia-Pacific Partnership on Clean Development and Climate.

Although the means are symbolically different, the EU and Australia's ultimate aspirations are more complentary than they are irreconcilable: both jurisdictions have committed themselves to sustainable development policies and begun to experiment with innovative measures for addressing environmental and economic concerns (Grant and Papadikis 2004: 290). Policy questions that previously separated the parties are now eliciting modified attitudes — for example, on emissions trading. For instance, initial reluctance by the EU to consider this option has given way to cafeul consideration for limiting greenhouse gas emissions (Grant and Papadikis 2004: 290). At the Australia-European Commission Ministerial Consultations in Brussels in May 2004, Australia and the EU agreed to move progress bilateral climate change cooperation projects concerning ways to engage all countries in the fight against climate change; efficiency improvements to mobile air conditioners and end-use energy efficiency programmes in an urban environment (Howard 2005: 79). As Grant and Papadikis conclude, Kyoto is the visible sign of division, but

> if we examine the overall trends in terms of predispositions towards the environment and policies to solve problems associated with human interventions, the opportunities for collaboration or sharing knowledge and understanding far outweigh the negatives (Grant and Papadikis 2004: 290).

The Death of a Framework Agreement

Although the potential for Australian-EU relations over environmental policy could advance beyond the patent disagreement over *Kyoto*, the gulf between the EU and Australia is reinforced by the absence of a comprehensive Framework Agreement. A Framework Agreement encompasses the full scope of the EU's bilateral relationship with another state. The insertion of a human rights clause posed such an insurmountable obstacle for the Howard Government that efforts to secure an agreement were abandoned in 1997 (Murray 2002b: 66). The refusal to accept the clause, which appears in the EU's agreements with Cambodia, India and South Korea (Ward 2002: 179), downgraded the expression of the relationship to the *Joint Declaration on Relations between the European Union and Australia*.

Although the Framework Agreement's failure has been partially 'counterbalanced by serious attempts on both sides to give flesh to the Joint Declaration' (Murray 2005: 148), the shortcomings of the *Joint Declaration* serve to illuminate the opportunities that were lost. According to Ward (2002: 188) the *Joint Declaration* 'is as rhetorical as it is succinct'. Funding of joint projects between the EU and Australia is more problematic (Murray 2005: 148). The *Joint Declaration* failed to establish any bodies to oversee its implementation and does not regulate the frequency and nature of ministerial consultations. Above all, a Framework Agreement could have laid the foundation for healing divisions in the EU-Australian relationship.

What About the Good News? The Diminishing Relevance of CAP

Despite the sources of division destabilising the relationship, the declining relevance of the CAP, the broadening of economic, political and social cooperation, the strengthening of regionalist interaction in Asia and the fundamental connection that forms cornerstone of the relationship ultimately unite the EU and Australia. Importantly, the CAP's capacity to bisect the EU and Australia is mitigated by its declining

significance. As it becomes increasingly unsustainable for the EU to maintain its budgetary commitment to an industry of lessening importance to its economy, the CAP continues to drift further away from 'market-distorting subsidies and export refunds to a system of direct aid for farmers' (Patten 2001: 4). The EU has already embarked on three phases of CAP reform: the mostly unsuccessful MacSharry reforms in 1992 (Sharpston 2002: 35; Kenyon 2002a: 6–7; Ackrill 2000: 87), the 1999 Berlin amendments (Sharpston 2002: 36), and the recent commitment to total decoupling, separating subsidies from production (Lamy 2002a: 5). But it has not been enough.

Today, CAP reform continues to be driven by tightening budgetary margins and external pressures exerted in the contest of multilateral trade negotiation (Kenyon 2002a: 8). The CAP as a percentage of the EU's GDP has declined to 0.33% over the ten years from 1993–2003 (Murray 2005: 104). Arguably, CAP reform will continue to lower subsidies and de-link income supports from production, while funding is tailored to support specific environmental and regional development objectives (Kenyon 2002a: 8). The pursuit of global competitiveness will drag the EU's agricultural policy out of the protectionist age. Although the WTO negotiations collapsed in Cancun, the EU exhibited signs that it was willing to accept steeper tariff and subsidy reductions (Davis 2003: 1). Additionally, the enlargement of the European Union has intensified the need for serious reform. The incorporation of predominantly agrarian, poorer economies into the EU will further strain the CAP's viability, neutralising the greatest obstacle on the path to enhanced EU-Australia cooperation.

Whistling the Same Trade Tune

Despite the conflict caused by the CAP, there is substantial agreement between Australia and the EU within the trade dialogue. Throughout the Uruguay and Doha rounds, the common ground between Australia and the EU has been steadily expanding (Kenyon *et al*. 2005: 61). As Vaile recognises, 'we agree on far more issues than we disagree on' (Vaile 2002: 4). Former European Trade Commissioner Pascal Lamy concurs, insisting that 'on the vast majority of trade issues, the EU and Australia *do* share a common WTO vision' (Lamy 2002b: 2). In particular, Australia and the EU share an aspiration to liberalise trade in industrial products and services, especially in the financial, telecommunications, audiovisual, professional and transport industries (Kenyon 2002a: 15). Together, they seek the dismantlement of tariff barriers around the world, especially in Asia, and they seek to strengthen WTO rules governing dispute settlement (Kenyon 2002a: 15; Kenyon 2002b; DFAT 1996: iii).

Widespread evidence of that cooperation is emerging. In 1994, the *Agreement between Australia and the European Community on Trade in Wine* was signed.[8] The EU is a lucrative destination for Australian wine, absorbing 40% of Australian exports in 1993 (Murray 2003: 231). In 1999, the *Mutual Recognition Agreement on Conformity Assessment* was signed,[9] which reduces technical barriers to trade by allowing conformity assessment to be undertaken in the exporting country (European Commission 1998: 1). Furthermore, the EU and Australia have struck agreement in diverse areas including mutton, lamb and goat meat,[10] aviation and the transfer of nuclear materials (European Commission 2005b: 1; Murray 2005: 69). As part of their development agenda, Canberra and Brussels have committed to implementing and promoting policies to grant duty-free and quota-free market access for least-developed countries, to assist these countries with access to

[8] Opened for signature 26 January 1994 (entered into force 1 May 1994).
[9] *Agreement on Mutual Recognition in Relation to Conformity Assessment, Certification and Markings*, opened for signature 24 June 1998, ATS 1999 (entered into force 1 January 1999).
[10] *Voluntary Restraint Agreement on Mutton, Lamb and Goat Meat,* opened for signature 14 November 1980, ATS 1980 (entered into force 20 October 1980).

affordable medicines, and to deliver technical assistance and capacity-building activities (Europa 2003). Clearly, the CAP has not completely silenced a productive trade dialogue.

Looking Beyond Trade

Cooperation between the EU and Australia beyond trade is augmenting and diversifying. In 1994, the *Agreement Relating to Scientific and Technical Cooperation* was signed, which promotes collaboration in 'bio-technology, medical and health research, marine science, the environment, and information and communication technologies' (Murray 1997: 240). Educational collaboration and exchange have been prioritised (Murray 2002a: 171). For example, the EU-Australia Pilot Cooperation Programme in Higher Education was established to facilitate institutional cooperation at postgraduate level (European Commission 2002: 1; European Commission 2004: 1).

Furthermore, the EU and Australia are increasingly united by their evolving security dialogue (European Commission 2003b: 1). For example, Australia and the EU have supported the counter-terrorism and law enforcement capacity in the Asia Pacific region, for example through assistance to the Jakarta Centre for Law Enforcement Cooperation in Indonesia, which provides practical assistance to countries in the Asia Pacific region for capacity building in counter–terrorism (Howard 2005: 78). Negotiations have commenced on a bilateral agreement between Australian law enforcement authorities and EUROPOL to enhance police cooperation to better respond to transnational crime threats and terrorist financing. Such a deal could maximise information exchange and facilitate optimal access to intelligence agencies between the two police forces (see Howard 2005: 79).

According to Romano Prodi, former President of the European Commission, '[w]e want to work closely with Australia on fostering democracy and human rights in the Pacific region' (Prodi 2002: 1). Murray has also observed 'shared visions regarding the need to confront challenges that go well beyond national boundaries, such as terrorism, and common concerns with both advancing and managing globalisation' (Murray 2005: 1). The Australia-EU dialogue encompasses weapons non-proliferation and export control issues, particularly with respect to regulating trade in dual-use items. The periphery of the relationship's vision is broadening: Canberra and Brussels have cooperated on rural and regional policy (European Union 2005: 1), drugs in sport (European Commission 2000: 1), transport, development aid cooperation in the Pacific, and migration and asylum (Europa 2003). The historical obsession with the CAP is retreating as a new horizon for EU-Australian engagement arises.

Seeking Engagement Through Regionalism: Australia, Europe and Asia

In an era of 'competing regional capitalisms' (Coleman and Underhill 1998: 3), Australia has been divided from the EU because of its exclusion from regional architecture. The EU is a 'powerful regional bloc' that increasingly engages in inter-regional dialogue with other groups of nation states (Richards and Kirkpatrick 1999: 684). However, the regionalisation of engagement has long frustrated Australia because it is not part of an 'enhanced sovereignty arrangement' (Higgott 1998: 52). Australia is 'outside the loop of regionalism and institutionalised agreements' (Murray 2002b: 67, 71). Consequently, Australia suffers from insufficient opportunities to broaden the mechanisms for engagement with the EU (Murray 2002a: 155).

However, Australia can overcome this integration deficit by intensifying its presence and participation in the Asia-Pacific. Although the country has long grappled with its

identity, disoriented in its transitional phase between Europe and Asia (Higgott and Nossal 1997: 169; Murray 2002a: 156; Huntington 1993: 22; Brett 1996: 187; Abbott 1991: 28; Milner 1996; Fitzgerald 1997), the contemporary project of regional integration undertaken by successive Australian governments is beginning to yield success. Initially, the Hawke and Keating governments enthusiastically propounded Australia's economic and security engagement with the Asia-Pacific (Milner and Quilty 1996). Canberra was instrumental in the establishment of the Asia-Pacific Economic Cooperation forum ('APEC') in 1989.

However, its broader effectiveness is contested, given its 'confinement to economic issues, to the exclusion of cultural and other imperatives' (Ward 2002: 178–9). Confident that Australia's destiny lay within the Asia-Pacific, the then Prime Minister Paul Keating promoted the compatibility of Asian and Australian values (Viviani 1997: 164; Evans and Grant 1995: 31; Sheridan 1995). His Government argued that its liberal pursuit of lower tariffs and deregulated financial markets would facilitate the expansion of links with the dynamic economies of East Asia (Bell 1988; Catley 1996; Maddox 1989; Singleton 1990; Garnaut 1989).

In addition, Labor's emphasis on the importance of Australia's security within the region led to the establishment of the Association of South-East Asian Nations ('ASEAN') regional forum (Evans 1989); inaugural joint military exercises between Indonesian and Australian troops and the signing of a security agreement between Jakarta and Canberra in 1995 (Evans 1994: 3; Mack 1993). Economic, political and security links were proliferating. Australia was beginning to find its feet in the Asia-Pacific.

Consolidating Asian Engagement

Although its attitude to the Asia-Pacific has often been unpredictable, the Howard Government has arguably strengthened Australia's role and reputation in the region. Initially, the Prime Minister appeared resistant to enhanced Asian engagement. In 1988, Howard criticised the extent of Asian immigration in Australia (Masanauskas 1991: 13). He was occasionally hostile to the Keating Government's regional focus (Baker 1996: 9), and alienated many in Asia by failing to promptly condemn Pauline Hanson's vitriolic tirades (McDougall 1998: 141).

Beyond the rhetoric, Australia's diplomatic and military role in East Timor's quest for independence strained relations with Jakarta (MacIntyre 1999: 34; Crouch 1999: 16; Downer 2005: 8; Downer 2001: 337–8). Recently, Indonesia's handling of Jemaah Islamiah in the wake of the Bali Bombings has dominated Australia's sensitive relations with its largest and nearest neighbour (*The Economist* 2005: 33).

However, the importance of Asia has motivated the Howard Government to explore and seize emerging opportunities in the region. Today, the Prime Minister boasts his Government's achievements, declaring that '[n]o Australian political party has a monopoly on engagement with Asia' (Howard 2004: 9). Hailing the Coalition's policies of 'active engagement with Asia', *Advancing the National Interest* announced that '[t]he countries of Asia have always mattered to Australia. Close engagement with them is an abiding priority in Australian external policy' (DFAT 2003c: 72).

The Government has mostly practised what it has preached. Canberra generously supported Thailand, South Korea and Indonesia in the wake of the Asian economic crisis (Milner 1996: 178). The Government donated $1 billion to the relief effort following the devastating tsunami in 2004 (Davis 2005: 1; Woolcott 2004: 144). The Jakarta and Bali bombings have prompted Australia and Indonesia to enhance counter-terrorism

cooperation (Downer 2005: 8). In the trade sphere, the Government secured free trade agreements with Singapore and Thailand (Colebatch 2001: 2). Formal negotiations have opened with Malaysia (Uren 2004: 21), while agreements with Indonesia, Japan and China are being investigated (Davis and Sutherland 2005: 26; Taylor 2005: 1; Lewis 2005a: 1; Grattan and McDonald 2005: 1).

Most importantly, the Howard Government has won Australia membership of a cornerstone of the Asian regional architecture. Australia's invitation to the inaugural East Asia Summit in Kuala Lumpur in December 2005 presented an opportunity to overcome the persistent challenge posed by Australia's exclusion from regional fora. Although Howard had originally dismissed the Treaty of Amity and Cooperation as a 'Cold War relic' (Lewis 2005b: 1), Australia eventually signed (Kerin 2005: 2). The Summit was widely hailed as the 'launching pad for what might emerge in the future as a major new constellation of global power politics' (Parkinson 2005: 13), the region's 'most exclusive and potentially powerful club' (Dupont 2005: 15). According to Callick (2005: 2), the Summit could 'eventually rival the European Union and APEC as a regional body', it could 'become one of the most influential economic and trade power blocs of the 21st century with a free-trade agreement among member nations — including Australia — possible within 20 years' (Kerin 2005: 6). Australia's elevation renders the prospect of full ASEAN membership more realistic.

Admittedly, problems persist: Australia's intimate relationship with the Bush administration continually nourishes the perception that the Howard Government is America's 'deputy sheriff' in the region (Woolcott 2004: 144). Furthermore, the treatment of Australian citizens convicted of drug importation offences by certain Asian states' criminal justice systems has ignited impassioned responses in Australia and in Asia. Moreover, Australia must balance the increasingly difficult task of maximising its commercial and security relationship with China and preserving its prioritisation of the ANZUS alliance, at a time when some analysts highlight the escalating potential for conflict between the United States and China (Hutton 2007). This tension is heightened by Australia's recognition since 1972 of Taiwan as a Province of China (Woolcott 2004: 145). Despite the persistence of such unpredictable factors in the relationship, the question ultimately appears to no longer be whether Australia should engage with Europe, but what the limits of that engagement are.

Befriending the Awakening Tiger…

Despite initial differences, Europe's increasing engagement with Asia emphasises the importance of Australian membership of the region's multilateral architecture. After overcoming the conditionalities that hampered its relations with Asia in the wake of the Cold War (Bretherton and Volger 1999: 131), the EU became 'seized with the importance of Asia' and vigorously engaged with the Association of South East Asian Nations ('ASEAN') (Bretherton and Volger 1999: 131). In 1994, under the German Presidency, the EU embarked on the 'New Asia Strategy' (Commmission of European Communities 1995; Machetzki 1994; European Commission 1994), which advocated 'an increased emphasis on political dialogue, a new focus on economic cooperation and on enhancing mutual understanding, as well as for a continuation of development cooperation' (MacDonald 2002: 148).

Europe's presence in Asia is partly motivated by the region's size and its rapidly growing economies (Dent 1999: 383). Asia is a larger regional trading partner for the EU than the North American Free Trade Agreement ('NAFTA') (McDonald 2002: 147). In 1996, East Asia took 8.2% of EU exports and provided 10.6% of EU imports (McDougall 1998: 117). Above all, Asian and European engagement is the logical consequence of the emerging

significance and power of the two regions. Together, Europe and Asia represent two of the three poles of the geopolitical order (Soesastro 2002: 143).

The extent of EU-Asian integration illustrates the importance of further Australian involvement in the region. Although ASEAN and APEC have been less successful avenues for EU-Asian cooperation (Soesastro 2002: 143), the Asia-Europe Meeting ('ASEM') has been a particularly productive engine for advancing the relationship. Established in 1996, ASEM facilitates dialogue on political, security and economic isssues between the EU and the ASEAN countries and Japan, China and South Korea (Gilson 2004: 185). ASEM aims to 'realize and develop a concerted relationship in shaping the international order' (Soesastro 2002: 184). Its achievements are emblematic of the advancement of EU-Asian relations. The ASEM Trust Fund provides technical advice and training on financial sector and social policy reform. The Asia-Europe Environmental Technology Centre promotes cooperative research among environment scientists in the two regions.

Furthermore, the ASEM Business Forum promotes frequent dialogue between European and Asian investors. European Business Information centres have been established in many Asian cities, and the European Investment Bank has been active in supporting a number of aid programs in ASEM states, including the financing of natural gas projects in Thailand and Indonesia. Several Asian states benefit from the EU's Generalised System of Preferences, which provides a favourable importation regime for goods originating in developing states (Ward 2002: 183–4). Additionally, ASEM has pursued an early relaunch of a new round of multilateral trade negotiations to liberalise trade and investment between countries in Asia and Europe (Soesastro 2002: 143). Indicative of a broadening of relations, an Asia-Exchange Foundation (ASEF) has been created in Singapore to develop cultural interconnections.

Despite the widespread evidence of cooperation, recent examples of European indifference to Asia have highlighted the need for renewed engagement between the regions. The EU was inadequately represented at the ASEAN-EU foreign ministers meeting in Vientiane in December 2000 and the ASEM foreign ministers' meeting in Madrid in June 2002. At the fifth meeting of ASEM finance ministers in 2003, only one European foreign minister was present (Callick 2003: 12). Importantly, Europe recently invoked the historically divisive values discourse in response to Burma's membership of Asian-European institutions. However, periodic lulls in the advancement of the relationship are unlikely to arrest its advancement.

Building the Bridge from Europe to Asia

Not only can Australia enhance its relationship with the EU by becoming part of Asia's regional architecture, but it can overcome divisions in the relationship by facilitating Europe's relations with the wider region. This is reinforced by intermittent appearance of abeyance in the Asian-EU relationship. Whilst Australia's European identity may inhibit its fulsome Asian integration, its may also present Australia as an attractive investment destination for European businesses seeking to explore the Asia-Pacific region. Australia is a key trading partner and often plays a pivotal role in regional politics (Murray 2002a: 171). The Federal Government recognises this opportunity. According to *Advancing the National Interest*, the 'Australian Government is using its regular high-level contact, and the unique and valued perspective we offer, to encourage the European Union to remain productively engaged with East Asia' (DFAT 2003c: 105).

This strategy appears to be yielding success. The EU recognises Australia's role and knowledge of the Asia-Pacific (Murray 2005: 213). In particular, the EU has benefited

from Australia's interpretation of human rights and security issues (Patten 2001). According to Prime Minister John Howard, the EU and Austarlia are

> looking to strengthen cooperation with the EU in the region through joint initiatives and better coordination of development and humanitarian activities in country. We work actively with the EU at the country level through field representatives in partner countries and hold bilateral discussions as opportunities arise, for example, at Pacific regional meetings and the annual Pacific donor consultations. Australia has invited the EU to attend the Pacific 2020 Summit, an important high-level forum to discuss regional development needs and priorities (Howard 2005: 79).

Australia can continue to play a pivotal stepping stone as the EU continues its journey into the Asia-Pacific.

The Ties That Bind

In addition to the declining influence of CAP, the emerging and broadening manifestation of cooperation and the prospect of enhanced engagement through the Asia-Pacific region, Australia and the EU are ultimately united by their common bonds (Forwood 1989: 12; Davison 1991: 40). Australia's cultural identity, political norms and social values are immersed in its predominantly European heritage (Miller 1983). Although Australia 'has developed distinctive cultural symbols, economic structures and strong elements of a national identity, the heritage and influence of Europe is pervasive' (National Europe Centre 2005). As members of 'the West', Australia and Europe share similar values and conceptions of history (Murray 2002b: 66). Fundamentally, there is a common commitment to freedom, democracy, and human rights (Harvey 2001: 312). As Lamy proclaimed,

> Australia and the EU are committed to free and fair societies built upon the rule of law established by democratic institutions. We seek peace and security and increased regional integration through dialogue and common cause and an accountable multilateral framework (Lamy 2002a: 1).

Furthermore, the composition of Australia's population reflects its European origins: nearly 90% of Australians have European ancestry. Almost 19 000 Europeans migrate annually to Australia. More than one million Europeans visit Australia every year, while more than 700 000 Australians travel to Europe annually (DFAT 2003c: 99; Jupp 1991: 128; Hugo 2003: 25). Despite the political and economic tensions that can frustrate the friendship, Australia and the EU are closely bound by their historical, cultural and social union.

A Solid Foundation, Despite the Cracks

In contemporary foreign relations, geopolitical alliances operate in an unpredictable climate. National interests often collide, fuelling political and economic disputes. But such divisions must run deep before they can destroy a relationship. This article has detailed the major sources of division in the EU-Australia relationship. It has argued that Australia and the EU are disunited by their differing political and economic strength. This inequality has been accentuated by the divisive function of the CAP. Additionally, the Howard Government's emphasis on bilateralism does not conform to the regionalist prism through which the EU increasingly views the world. Recent diplomatic divergence, manifest in disagreement of global environmental policy and reflected in the failure of the Framework Agreement, is highlighted by the Howard Government's relationship with the United States. From one perspective, the relationship appears to

be dominated by disagreement, ideological incompatibility and an indifference to caring.

However, there is a 'new, quiet transformation taking place' in EU-Australian relations (Murray 2005: 248). The focus in Canberra and Brussels has begun to shift from divergence to unity, from conflict to cooperation. The CAP's relevance is being neutralised by the rise of anti-protectionism. Trade cooperation is diversifying and evolving. Broader political and social integration is accelerating. The EU-Australia relationship can be further fortified by Australia's increasingly engagement with the Asia-Pacific, with which the EU is strengthening its connection. Australia can continue to facilitate Europe's interaction with the wider region. Ultimately, Australia and the EU are bound by deep historical, cultural and social connections which have forged a broadly common view of the world. Tremors arising from the historical and contemporary differences between Australia and the EU reverberate, but they will not destroy the foundation of the alliance.

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Legal Research Methodologies in European Union & International Law: Research Notes (Part 1)

Tamara Hervey, Rob Cryer & Bal Sokhi-Bulley

Project: Collaborative Doctoral Training Project (ID 06/160/S)

Dates: 1 October 2006 - 30 September 2008

Project Leaders: Tammy Hervey (Professor of Law, University of Sheffield)
Rob Cryer (Professor of Law, University of Birmingham)
Bal Sokhi-Bulley (PhD Candidate, University of Nottingham)

Funding: Arts and Humanities Research Council (AHRC)

Introduction

"Why do I need theory – my PhD is complex enough without it?"

"Where can I find ideas about what to do to solve my research problems?"

"I'm not a theorist –what's the point in theory unless it is useful for my specific research project?"

"What is a legal research methodology anyway?"

"How can I help my PhD students to devise and successfully complete their PhD projects?"

THESE KINDS OF QUESTIONS ARE THE RATIONALES BEHIND THIS AHRC funded research project and its two workshops (29-30 June 2007, University of Nottingham; 27-28 June 2008, University of Sheffield). The research project has two aims. The more directly substantive pedagogical aim is to enhance the methodological understandings and capabilities of three groups of scholars working in EU and international law: PhD students, staff at the early stages of their research careers, and more established members of staff who are PhD supervisors. The other core aim, based more on transferable skills and professional capacities, is to enable those PhD students to present their work and develop their networks with a wider range of scholars than in their home institution.

ISSN 1815-347X online – Hervey T., Cryer, R. & Sokhi-Bulley, B. (2007) 'Legal Research Methodologies in European Union & International Law: Research Notes (Part 1)', *Journal of Contemporary European Research*, Vol. 3, No. 2, pp. 161-165.

The Background to the Project and its Aims

The project arose from the experiences of its coordinators. Law PhD students required to follow a module on Legal Research Methods seemed to fall into two distinct camps: the 'theory people' and 'the rest'. To generalise, this latter group seemed to feel that theory is the arcane preserve of a small group of self-identified theorists, and thus external to what most law PhD students or other academics do. But experience of teaching about legal research methods and supervising students led to an increasing conviction that theory (or methodology) is fundamentally practical. It relates directly to the formation of research projects, and then the practicalities of carrying out research – what research questions we ask, what data we use, how we carry out our research, how we explain why we examined what we did, or why we went about it in a particular way.

By 'methodology', we mean something different from, although related to, 'method'. The method is the way in which a research project is pursued – what a researcher actually does to enhance our knowledge, test her thesis, or answer her research question. Methodology is the system of methods applicable to research in a particular field, in this instance, international or EU law. Thus, methodology is closely related to what we understand the field of enquiry ((international or EU) law) to be. It is therefore closely related to questions of theory. To put it very crudely, and to give an example, if we believe law to be the written product of deliberations and negotiations between specific institutions (let us say, on the EU side, the European Commission, European Parliament and Council of Ministers, or, on the international side, multilateral treaty negotiations), then our system of methods – our methodology – for researching law in that sense will involve the analysis of the texts produced through those deliberations and negotiations. It will not be interested in the effects that law has on social life. Thus 'theory' and 'methodology' are closely bound up together. They inform the overall 'approach' that research projects take.

The project coordinators also noticed that law students in general tend to be less methodologically self-aware, less good at articulating the approach underpinning their projects or proposed projects, than those in other social science disciplines. For individual PhD students, this can pose problems at viva voce examinations, which often involve questions that are essentially about methodology, such as – why did you choose this project, what is important about it? Reflecting on this kind of question requires us to be explicit about the theoretical assumptions about the nature and qualities of law in general – and EU and international law to be more specific – that we make when setting out on our projects. Our assumptions, our approaches underpin the kind of legal research questions that we each think are valid or interesting. They also inform what we do when we are carrying out our research. Many law PhD students seem to lack the vocabulary and confidence to explore these matters – although they had often embarked upon, or even completed, worthwhile, interesting projects. At a disciplinary level, at a time when the RAE is moving towards some kind of metrics-based approach, albeit with continued peer review, the imperative for legal scholars to successfully attract funding for their research projects is becoming increasingly pressing. The project therefore also aims to provide an intellectual space within which EU and international law scholars can reflect on the unique contribution to the academy of legal research methodologies.

The project therefore aims to assist PhD students working in EU and international law to complete their projects, and become better equipped for their future careers as legal researchers. But the methodological development of a discipline is a matter for all its scholars, not simply a professional building block that we pick up early in our careers and then never revisit. The project is therefore also aimed at its coordinators, and their peers,

other colleagues who work in EU and international law. The project is not principally aimed at the 'theory people', although they play a crucial role in the project's success, not least by assisting 'the rest' to embrace the theoretical, for instance, by articulating it in non-excluding language.

The Project Process

The project has two components: a set of materials and a series of workshops (the project coordinators hope that the partner institutions will continue to support the workshops from their research training funds beyond the life of the project). The materials form the basis of the workshop, and workshop participants must read the materials and consider the questions they raise, in the context of their own research projects, in advance of the workshop. The project thus began with the creation of the materials.

The project coordinators – two professors of law and a law PhD student – are responsible for the project materials. The materials were circulated to academic staff in the partner institutions for comment, and were substantially revised following that constructively critical process. At present, the materials are still a 'work in progress', in that they will be modified again in response to the experience of the workshops. The materials seek to provide a list of approaches (or methodologies) that are used in EU or international law scholarship, along with a brief introduction to each approach and two sample readings which either explain it or demonstrate its use – one in EU law and one in international law. The approaches (at present) consist of the following[1]:

I. The Main Jurisprudential Approaches
   A. Natural law
   B. Legal positivism
II. Extensions and Negations
   A. Modern and critical approaches
      i. Marxism
      ii. Liberalism/Constitutionalism/New Governance
      iii. Idealist
      iv. Critical Theory
      v. Feminism
      vi. Queer Theory
      vii. Postcolonial Theory
   B. 'Law and'
      i. Law and international relations/political science
      ii. Law and economics
      iii. Law and sociology
      iv. Law and history

Obviously, there are a number of problems with this approach. There are overlaps between the different approaches (for example feminist, queer and postcolonial theories are also 'critical theory'). In real life, legal research projects rarely adopt a pure version of just one theoretical or methodological perspective. Many of the avowedly theoretical approaches have arisen at least in part as a response to earlier theoretical approaches, and thus draw to some extent on those other approaches. Others build upon the

[1] The idea for the labels of Part I and Part II was taken from Barron *et al*. (2005) *Jurisprudence & Legal Theory: Commentary and Materials*.

insights in other theories (whether they admit it or not). The approaches identified and classified are thus not hermetically sealed, but fluid, and negotiable. Hence, the headings used in the project materials are by no means determinative, and many scholars could equally have been brought under a number of different headings, either because their work spans both areas, or because the labels used do not quite capture the way these scholars approach their studies. The labels used are not intended to be normative, merely a way of grouping people together in a manner which makes introductions, such as those made in the project materials, manageable. The list is supposed to be a device to help EU and international law scholars clarify their thinking, not a straightjacket.

Secondly, it was not possible to include all relevant approaches in the list. The list omits several other interdisciplinary approaches, such as law and geography, law and anthropology, or law and literature. In part, this relates to the prevalence (or lack thereof) of such approaches in EU and international law. The absence of much literature in the area is not, in itself though, a justification for excluding an approach. Indeed the absence of much work on point leaves a great deal of room for innovative work. However, practicalities of how many approaches can be covered in one workshop meant that judgment calls had to be made on inclusions and exclusions, and some can (and will) disagree. The main point of contention was the exclusion of comparative law. This was partly to keep the project manageable, but also justified since, in our view, comparative law is a subject in itself and thus has its own theories and methods. Several of the academic partners to the project were disappointed about this omission. They pointed out that, in both EU and international law scholarship, there is a tradition of using comparative methods (see Lenarets 2003). That is indeed the case. There is therefore scope for a similar project, based on comparative law.

Thirdly, the different approaches on the list are in some senses incommensurable, in that they are trying to achieve different things. For example, legal positivism cannot be rigidly contrasted with critical approaches because they are the methodological bases for seeking answers to different types of research questions. The application of the different approaches to international or EU law has also developed in different ways. Sometimes an abstract pre-existing theory has been applied, 'top-down', to international or EU law. These approaches may be inspired by specific sources, for instance national constitutional legal theories. Alternatively, they may draw on general social science perspectives, for instance discourse analysis, which are used in all sorts of fields, not just legal scholarship. At other times, approaches and theories have developed 'bottom up'. They are grounded in specific substantive questions which researchers have pursued in their legal research projects.

A further important point is that it is difficult to 'label' approaches/methodologies/theories since many proponents do not wish to be labelled as belonging to a certain 'category' of thinking. Moreover, as noted above, labels give the false impression of clear demarcation between approaches, whereas many scholars use more than one approach as and when it serves their purpose.

Nevertheless, the list and its labels provide a useful heuristic device and a means of enhancing communication between the workshop participants. A number of the workshop activities were specifically designed to draw participants' attention to the problems inherent in labels. For instance, groups created a Venn diagram of two of the approaches on the list, noting in particular which ideas, concepts, questions, scholars, and so on, fell within both of their two approaches.

Practical information

The project has ten formal partner institutions (Belfast, Birmingham, Durham, Glasgow, Keele, Leicester, Liverpool, Manchester, Nottingham and Sheffield), but the project materials are freely available on the project's website[2], and the workshops are open to participants from any institution. Although the project is aimed at law students, it welcomes students from all disciplines who are interested in legal research methodologies.

Conclusion

We hope it has now become clear that the project coordinators have little time for those who use theoretical or methodological discourse to mystify, to inflate weak thinking, or simply to sound clever. The project seeks to show that developing an understanding of different possible theoretical and/or methodological positions which inform international or EU legal research is all about the essentially practical activity of enhancing our capacities as international or EU legal scholars, and improving the outcomes of our research and writing endeavours (including PhD theses).

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[2] Project website available at: http://www.sheffield.ac.uk/law/research/clic/research/projects/res_methodology

BOOK REVIEW

Martin Holland (ed.) (2007) *The Europa Lectures: 2001-2006* Christchurch, NZ: Canterbury University Press

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In recent years, the concept of Europe as an idea rather than as a place has enjoyed increasing support throughout the broad framework of academics and practitioners working in the field of European Studies. As such, Martin Holland's *The Europa Lectures 2001-2006* is a timely and welcome addition to the current literature on European Studies as it provides a unique collection of diverse perspectives on the past, present and future of the European idea. The publication is based on a series of high profile lectures hosted by New Zealand's National Centre for Research on Europe since the turn of the new century and it would not be impertinent to suggest that read as a whole, the volume presents one of the most succinct and thought-provoking analyses for quite some time of the challenges which the new Europe faces. It is perhaps surprising but indeed heartening to see such an original and important addition to the field of European Studies literature emanating from as far away as New Zealand but this is perhaps a reflection of how others are often more interested in contemporary Europe then Europe itself.

The contribution by the current Prime Minister of New Zealand, Helen Clark is indeed noteworthy as she shies away from the normal reserved statements of a sitting politician and using her original training as a political scientist, she makes a strong case for European enlargement from an "outsider's" point of view. A similar approach is taken by the former New Zealand Foreign Minister Phil Goff in his analysis of the nascent European External Action Service and the ramifications of an EU constitution for New Zealand.

From the European side, Mariann Fischer Boel, the current European Commissioner for Agriculture engages in an astute and unconventional examination of the advantages and disadvantages of the Common Agriculture Policy whilst Margaret Beckett, the former British Foreign Secretary discusses the challenges of EU enlargement whilst presenting a compelling and convincing argument on the economic benefits of climate change. Meanwhile, Chris Patten, the former External Relations Commissioner concentrates on bilateral EU-NZ relations in his piece with some very interesting observations on multi-lateralism and the expansion of the EU.

However, perhaps the most novel and innovative contribution to the volume is that of the former MEP and chair of the European Parliament Budgetary Committee, Terry Wynn who gives a fascinating insight into the machinations of the European Parliament and the nuts and bolts of the financing of the EU enlargement process. Wynn's article tackles many of the key issues affecting the EU enlargement process in a combative manner but his calculations on the structural operations of transfers from the EU budget are captivating.

The shortest piece in the volume will probably be the one that attracts most attention. The contribution of the Turkish Prime Minister, Recep Tayyip Erdoğan is as enlightening and contentious presentation on the Turkish candidacy for EU membership and his affirmation that ,'the Turkish population is predominantly Muslim, and this should be seen as an added value to the EU', is sure to ignite debate in the current political climate. Erdoğan writes with refreshing honesty and his argument is compelling and one wonders whether we will look back at this lecture in the future in terms of an opportunity lost or taken.

All the aforementioned lectures are presented in chronological order but they work best when read as a set as the issues they grapple with are not time specific and it is quite remarkable how Wynn's 2001 lecture seems even more relevant today. What is interesting is that all the lectures were given in New Zealand and one wonders if some of these politicians would have been as candid and honest in their views and opinions if the lectures had taken place in mainland Europe under the watchful eyes of the European press and media. This is in many ways one of the real strengths of this volume in that one feels party to an exhibition of an increasingly rare honesty amongst European politicians regarding enlargement and the future of the EU with even the remarkable confession of Margaret Beckett that she was opposed to the U.K. joining the EEC in 1973 and how she campaigned for a "no" vote in the 1975 referendum on continuing British membership. Such anecdotes pepper the publication and although the lectures may seem quite informal at times, they are backed up by sound academic research and the availability of research teams in lecture preparation is evident in Wynn's complicated statistical analysis of EU transfers or Beckett's in depth examination of EU agricultural reform and their impact on the Doha negotiations of the World Trade Organisation.

These diverse lectures are somehow woven together in Martin Holland's excellent introduction and the brief pages of this introduction provide a terse and seminal guide to any interested party of what has really happened in the EU since the dawn of the new millennium. Holland brings together the major developments which have marked the twenty-first century trajectory of the EU and interspersing these with the perspectives of the various contributors to the volume, he manages quite remarkably to catch the essence of the entire publication in the introduction and one finds oneself increasingly referring back to then introduction as one progresses through the different pieces. There is also a very useful and informative preface which charters the history of New Zealand's National Centre for Research on Europe outlining its mission and funding strategy. This publication emanated from this body so it is obviously of interest to read of its other activities, projects and future objectives.

The only major drawback to this volume is its deliberately short nature for it leaves one with the desire to hear much more from the contributors. However, the questions it poses remain long after and although it may seem a long voyage to New Zealand to learn more about ourselves as Europeans, this book is definitely worth the trip.

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The first seven lecturers in the Europa series, first organised by the National Centre for Research on Europe at the University of Canterbury and now by the European Union Centres Network in New Zealand are an impressive list: The Prime Minister of New Zealand, Helen Clark; the Foreign Affairs and Trade Minister, Phil Goff; the Prime Minister

of Turkey, Recep Erdoğan, two EU Commissioners, Lord Patten and Mariann Fischer Boel; the Former UK Foreign Secretary, Margaret Beckett and the Chair of the European Parliament's Budget Committee, Terry Wynn.

A well-connected research centre in the EU would feel pleased to have amassed a group of this quality. The lecturers deal in the main with two issues, New Zealand's relationship with the EU and where the EU is going particularly in its dealings with the rest of the world. The lectures are all accessible and succinct but vary considerably in tone. Terry Wynn shows a passion for the European project which is infectious. Helen Clark provides a careful review of the various levels of linkage with the EU and the ways in which several of them might be developed, particularly in areas such as research and development. The clear general message is one of opportunity.

Since the lectures cover a six year time span they also provide a neat insight into the contemporary debate - starting by considering how the enlargement to 25 and then 27 members might go and ending with a consideration of further expansion to Turkey and Croatia. Chris Patten puts his finger on the key issue, that the EU has a strong emphasis on looking outward. As a joint entity it has enhanced influence over the sum of its parts and as a 'unified' market offers greater attractions than one with fragmented standards and rules. An emphasis on the Common Agricultural Policy is inevitable, with Mariann Fischer Boel encouraging the reader to note the extent of progress in reform, rather than lamenting how far away from free and fair trade the EU is in this field. However, while the participants are bound in this framework, financed by the European taxpayer, to focus on the positive, there are clear references to the downside. Recep Erdoğan points out that there is life for the prospective members outside the EU even if membership does not come and the EU runs the risk from not participating fully in the dynamic markets on its borders. Almost all the transition economies whether or not inside the EU are experiencing rapid growth and inward investment. Phil Goff sets out the challenge for New Zealand to compete with these countries and to benefit from their growth. Margaret Beckett raises the wider issues of poor progress on handling climate change and the current round of trade negotiations.

These lectures have proved an opportunity to set out an agenda and to try to advance the debate. They are continuing beyond this volume and it will be interesting to see what future speakers offer.

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BOOK REVIEW

Ian Bache & Andrew Jordan (eds) (2006) *The Europeanization of British Politics* Basingstoke and New York: Palgrave

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The Europeanization of British Politics (2006), edited by Ian Bache and Andrew Jordan, is the final outcome of a project supported by the Economic and Social Research Council (ESRC) and the University Association for Contemporary European Studies (UACES). Up-to-date, it is the main contribution to the understanding of how European Union (EU) has affected and still affects British politics. The topic is interesting and original, because, as the editors recognise, most of the British academic works investigate the influence of Great Britain (UK) in the EU policy-making, and not the influence that the EU exerts over the British politics. Moreover, even if growing attention has been devoted to the interrelations between EU political system and national political systems, in the UK the debate about comparativists and European studies scholars is still underdeveloped. Several contributions about the Europeanization of British politics have been already published. But, for different reasons, British politics has been often viewed as somehow isolated from European politics, and studies about Europeanization are limited to very specific policies or aspects of the British political life.

As a consequence, the first aim of this book is to cope with this limit in the literature, offering at the same time one of the most comprehensive research ever carried out about the Europeanization of a single member state. Moreover, contrary to what often happens in edited books, the common research framework creates strong links between the different chapters, offering to the reader a very accurate and complete perception of the Europeanization of UK.

In their chapters, the authors try to address the same questions: "What has been Europeanised and to what extent? When has Europeanization occurred and in what sequence? How and why has Europeanization occurred, and via what EU-level mechanism? Were there winners and losers through Europeanization? What factors explain the domestic response to Europeanization pressures and how should the process be characterized? Has Europeanization had any other important long-term effects?" (p. 31). Answers are based on secondary literature and original empirical research.

After a brief introduction, Ian Bache and Andrew Jordan define the theoretical tools that will be used by the authors. First of all, they define the concept of Europeanization as "the reorientation or reshaping of politics in the domestic arena in ways that reflect policies, practises and preferences advanced though the EU system of governance". Secondly, they show how careful a scholar should be in using this concept, because disentangling the EU key variable is difficult, and Europeanization always takes place together with other factors of change, like globalization or domestic change. This last element is particularly interesting: very often Europeanization has been used to explain too many changes in the member states, underestimating, for example, the role of

domestic actors and the fact that several reforms can be promoted even without the pressure coming from the EU.

The book is structured in three parts. In the first one, devoted to the UK polity, authors present the Europeanization of the central Government (Simon Bulmer and Martin Burch), the Foreign and Commonwealth Office (David Allen and Tim Oliver), the Government in Scotland (James Smith), the English regions (Martin Burch and Ricardo Gomez), and local governance (Adam Marshall). In the second part, politics are taken into account. Specifically, the Europeanization of political parties and party politics (Andrew Geddes) is considered, as well as the Europeanization of organized interests (Jenny Fairbrass), trade unions (Erin van der Maas), and the third sector (Rachel Chapman). In the third part, authors present the Europeanization of some of the most sensible (for UK actors) policies, like foreign policy (Tim Oliver and David Allen), monetary policy (Jim Buller), competition policy (Michelle Chini), environmental policy (Andrew Jordan), and regional policy (Thomas Conzelmann). In the final chapter, the editors present some comparative conclusions. Unfortunately, the book lacks a chapter on British Parliament and maybe a chapter on the Europeanization of public opinion and political discourse, even if in this last case some elements can be founded in the different chapters.

Very often the results are quite surprising, for at least two reasons. The first one is that sometimes the authors show that the role of Europeanization has been overestimated. This is the case, for example, of the central UK government, where changes do not reflect the only and simple presence of the Europeanization. The second reason is that the final picture of the role of the Europeanization appears much more complex that it was supposed to be by looking at other contributions. For example, one of the major findings of the research is the "evidence of a higher degree of the Europeanization of the British *polity* than the existing literature would suggest" (p. 267); on the contrary, "the Europeanization of the *politics* dimension was found to be more variable, but discernible" (p. 267); and, finally, "findings on *policy* do not sit easily with the standard findings on the degree of Europeanization in this domain…The effects, in short, are much more nuanced" (p. 269). In other words, this book can be useful not only for explaining the role of Europeanization, but also for identifying other factors producing change and reform, offering a testable set of hypothesis for further research.

The common framework utilised by the contributors and the importance of the scholars involved in the project make this book an essential reading for those that are working on the relation between UK and the EU and, more in general, for scholars working on the process of Europeanization. Moreover, the clear writing style and the richness of information presented make this book interesting also for a non-academic reader.

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BOOK REVIEW

Armin Von Bogdandy & Jürgen Bast (2007) *Principles of European Constitutional Law* Oxford: Hart Publishing

Clive Church
University of Kent

This is a massive book and, unusually for English books, relatively reasonably priced. It seeks to demonstrate that there is much to be gained from treating EU primary law as constitutional law. The focus is essentially on the evolution of German legal studies and the doctrines these have developed on European constitutional matters. At the same time the book is also concerned with elaborating new strategies for German legal research. The book also points to the influence of German ordo-liberal thinking on EU debates. All of this is documented in great detail both in the text proper and in the exhaustive footnotes. Thus a good deal of attention is given to emerging theories of rights, of instruments and of federalism amongst other things. Comparisons are also drawn between the EU today and the German Confederation of the late 1860s. In both cases the argument is that the executive branch has been strengthened by the creation of the new regimes.

Interestingly, there is one chapter, by Antje Wiener, which points in another direction. She calls into question what she sees as the rigidities of the German legal tradition with its methodological nationalism. Instead she urges the use of more flexible, Anglo-Saxon inspired, political science approaches in understanding EU constitutional developments. Elsewhere it is suggested that the German approach has difficulties in coming to terms with the consensus politics of the EU. But generally most contributors prefer to stick to a German perspective.

After very detailed contents lists and a series of tables (of cases, treaties, legislation and national constitutions) the book has 19 chapters. These are all written by well respected German authorities. As they come from a variety of schools they do not present a uniform view on the nature of the EU and its constitutional dimension. Some of their contributions have already appeared in other guises and places.

The chapters are divided into five sections of slightly unequal length. These are devoted to definitions, institutions, individual rights, economic aspects and competing visions respectively. Obviously it is not possible with a book of this size to comment on, or even list all of these. However, the first section includes studies of EU constitutional principles, federalism, national attitudes to primacy and the constituent power while the second deals with political institutions, instruments, courts and competences. The third covers rights and freedoms as well as citizenship as such while the fourth section looks at economic structures and competition law. The final section considers EU relations with member states, finality, the EU as a union of states and the advantages of constitutional provision. There is also a brief, and far from comprehensive, index.

Not surprisingly for a book on constitutional law, there is a good deal of thought in all this about what is meant by a constitution and whether the EU has, or indeed, needs one. In fact a constitution is seen as an ambiguous concept, capable of theoretical,

normative and descriptive understandings according to Möllers. Wiener prefers Snyder's fourfold definition. The book also assumes that the EU has an economic constitution as well as a politico-legal one. The latter, for Von Bogdandy and Drexel, is based on the principles of equal liberty, the rule of law, democracy, solidarity, loyalty and diversity but not on integration or supranationality.

However, not all the contributors agree that the Union needs a new constitutional document. Zilg thus argues strongly that the Union already has a constitution. Others support him. The suggestion is also made that European citizens ought, already, to be able to bring cases for unconstitutional behaviour to the ECJ. Equally, Hatje argues that the economic constitution already exists and is based much more on the free market than is the Grundgesetz. Competition law is therefore a part of it and needs to be considered as constitutional law.

There is also a good deal of stress, notably by Weiner, on the successful and on going process of constitutionalization. She sees this as going through three stages, of integration in the early years, Europeanization in the 1980s and now politicization. Grabenwarter reinforces this by saying that there is a slow process of reciprocal linking of constitutions with the Union, one of a number of reference to ideas of multi-level governance, although Mayer expresses some doubts about the MLG concept. Obviously these processes suggest that it not really necessary for the EU to seek a new constitutional foundation. In fact, Oeter goes further and argues that there is no need for a revolutionary act of constitutional creation, something for which there is anyway, for Möllers, no constituent authority, whereas there are conflicting norms to be considered. Gradualism, it is implied, is to be preferred. Moreover, in Wittzack's view in looking for a new constitutional foundation the EU is trying to preserve a conception of its own sovereignty which has been outgrown by nation states.

In any case, Oeter also argues strongly against creating a state like structure for the EU, He insists that the EU is and must remain consociational, consensual and federal. And, for him, being a federal polity does not mean it is a state. For Dann, moreover, the EU is actually an example of executive federalism involving both the member states and semi-parliamentary democracy. Zilg argues that federalism must not be seen as an eschatological category, something which is disappearing, but as a federative principle which is essential to the working of the Union.

Unsurprisingly, only a minority of the contributors express appreciation of the 2003-2004 Constitutional Treaty or believe it will change things for the better. Thus Von Bogdandy believes it will come into effect. Others consider that it could help to reduce the tension between Union and member states by underscoring the latter's sovereignty and enhancing subsidiarity. The fact that it makes the Charter binding is also welcomed. For Kühling this is more important than any new constraints which it imposes on the Union.

However, the majority are much more are more doubtful. Thus, on subsidiarity, Kirchhof argues that the draft is uncertain and even threatens to undermine the EU as a *staatenverband* by the way it reinforces states. Möellers also argues that it will not provide democratic legitimacy. In any case, for Kirkhof, thanks to its insistence on conferral of power by the member states, it cannot be regarded as a constitutional act. Its effectiveness is also questioned, Bast believing that it will actually increase, not reduce, the number of instruments and Dann that it will install a triple government system. In any case, Zilg, echoing Von Bogdandy's view of the ambiguity of the draft's conception of the EU's constitutional principles, is of the opinion that it does not achieve the level of clarity needed. Nonetheless, it neither shifts the Union's structure to that of a single state nor expands its competences, despite claims to the contrary in the text. Indeed, Haltern argues that it offers no clear sense of where the EU is going.

It follows from this that most of the contributors do not see the Union as a superstate. Here Kirkhoff points out that the EU is not a *verfassungsverband* but a polity based not on coercion but on the willingness of member states to integrate. So, while it may be state like, it is not a state, lacking dynamic competences as it does. Thus Haller makes much of the failure of the Commission's efforts to develop a European identity to support a state like idea of the EU.

And several contributors point out that member states remain powerful. Von Bogdandy & Bast thus argue that states, in conferring power on the Union, have not so much lost power as lost the capacity to determine their own powers. Similarly Everling points out that they are in an ambiguous situation. They have much latitude inside the Union even if their sovereignty has been limited by their subjection to the rule of law, thus setting up tensions with the Union which need to be handled with moderation and restraint. Law, moreover, has to be regarded both as a contract and as a means of holding the EU together.

Furthermore, he argues, the states' nominal support for European integration conceals both inertia and self interest. Others would stress national reservations about the defence of their rights by the ECJ. Thus Grabenwarter makes clear how differently, and with what reserves, the member states treat primacy. Generally therefore, the EU is seen as an unprecedented and polycentric body. As Everling says conceptions of the EU as a *zweckrational* economic association, a political *staatenbund*, a compound of constitutions or a federal structure are all too one sided.

Such cautious stances, which are slightly at variance with received views of German thinking on the EU in Britain, are one of the volume's main strengths. The book also provides some useful insights into constitutional understandings. Equally, many of the contributions provide thoughtful analyses and assessments, such as those of Dann on the EU's institutional structure. These will be of particular interest to English readers. And the book provides very detailed expositions of German legal thinking and case law, although the contributors are not afraid to question it.

However, it has to be said that there are also problems with the book. To begin with, although the fact that the contributors often take somewhat differing views is very welcome, it can also create difficulties. It means that there are perhaps too many angles and too little certainty. This makes it hard for the book to present a fully coherent view of what EU constitutional law is.

Secondly, although it has been translated, it still largely ignores Anglo-Saxon and other debates. And its treatment of the British case is often skimpy and faulty. Thanks to its omissions it gives perhaps too strong an impression of the essential difference of the British case. So its relevance to British readers is less than might have been. Moreover, the translations are of variable quality, so that some of the weakest chapters are extremely hard to follow, which is unfair both to writers and readers.

A third weakness is that, although the book was published in 2007, the text dates back to October 2004. And this shows. The reader is inclined at several points, to say "Yes, but what about…". Some pulling together of the threads and updating for the English edition would have been helpful here. There are also a number of overlaps which might also have been picked up in the final English editing. Lastly, the book does reflect what Möllers says is the German tradition, that is to see juridification rather than politicization as the mark of constitutionalization. So the politics of constitutional reform remains the spectre at the feast. Given present developments this is slightly unfortunate.

So the book is best regarded, less as a definitive and organised statement of what the principles of European Constitutional Law actually are and more as a series of contributions to working them out, cast in the form of essays on German constitutional thinking in the early years of the new century. As such lawyers will appreciate it, especially in its assessments of case law. General readers, however, may find it hard work to find the nuggets of insight sometimes concealed by the somewhat heavy style and approach. Both will probably use it as a work of reference, to be dipped into as needed, rather than read in full for its overall conception of EU constitutional law and its convincing demonstration that primary law should always be regarded as constitutional law.

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BOOK REVIEW

Guido Glania & Jürgen Matthes (2005) *Multilateralism or Regionalism? Trade Policy Options for the European Union* Brussels: Centre for European Policy Studies

Marina-Eliza Spaliara & Serafeim Tsoukas
University of Nottingham

The aim of his book is to answer some of the most fundamental questions concerning trade policy options for the EU. What effects will the growing regionalization have on EU competitiveness? Should the EU give top priority to the WTO, rely on both multilateral and bilateral liberalization or should it mainly pursue bilateral and regional agreements? In this book the authors go a long way toward answering these questions both from a theoretical and an empirical viewpoint.

After presenting a short introduction about the context of the forthcoming chapters of their books, the authors proceed with the second chapter. They begin with the definitions and Status Quo of regionalism and regional agreements. In international trade policy, 'regionalism' is used to refer to economic integration between two or more countries based on formal agreements (WTO 2004). The trading partners concerned grant each other conditions that are preferential in comparison with other countries. In this context, the concept 'regional' refers to a limited number of countries and is used to set it apart from multilateral liberalization, which included all member states of the World Trade Organization (WTO). This also means that non-members of the agreements are placed at a disadvantage with respect to members. It is a fact that all WTO member states with the exception of Mongolia are involved in at least one regional trade agreement. The WTO estimates that in 2005, approximately half of global trade has taken place within such associations. The authors provide an analytical table (Table 2.1) with a series of important regional trade agreements and the relevance of these groupings' intra-exports for global trade. They also present diagrammatically the increase of regional agreements since the middle of the 1990s (Figure 2.1). They note that between 1995 and May 2004, about 50% of these agreements came into force.

In the third chapter of the book, Glania and Matthes provide a range of potential advantages as well as numerous disadvantages of the latest wave of regionalism and bilateralism. They start their analysis with a variety of motives for regional trade agreements. Some of those are summarised as follows. First, geopolitical and diplomatic motives lead to an increase in regional agreements which represent instruments to intensify relations with certain countries to promote political stability, to protect peace or terrorism. Second, the establishment of regional trade agreements can serve to enhance negotiating power for example between the US and MERCOSUR (Southern Cone Common Market). Third, additionally there is a range of economic reasons for countries to conclude regional trade agreements, to substitute ineffective domestic production with more efficient foreign production. On the other extreme, sometimes access to the market of the partner country is improved to the advantage of one's own industry and at the expense of competition from outside the association. Further, a regional trade agreement means that third countries are placed at a relative

disadvantage. Lastly, at the multilateral level the costs of forging a consensus on liberalization are very high owing to the large number of members. Hence the conclusions of such agreements take longer and are less extensive.

In the next part of chapter three, the authors analyze theoretically and empirically the welfare effects of regional trade agreements as discussed in academic literature. An extensive number of theoretical studies provide mixed evidence on the welfare effects. Nevertheless, the analysis has shown that regional trade agreements discriminate against third countries that are not part of the agreement, owing to the preferential treatment of the partners. As far as the empirical evidence is concerned, on the one hand trade effects of regional associations are considered whilst on the other extreme, the focus lies on estimating welfare and growth effects. The majority of studies uses gravity models of trade, utilizes historic data and determines the most important factors that influence one country's trade with another. This approach has its weaknesses and consequently it is not unsurprising that different studies sometimes arrive at different conclusions. Concerning the effects on welfare can only be determined with general equilibrium models. Although, this approach has its charms, it also has disadvantages and therefore the different studies arrive at different conclusions. Overall increases in welfare can be shown for almost all members of regional trade agreements. Non-members are affected to a small degree, but partially suffer losses of welfare as is to be expected. To summarize, increases in welfare are greatest in the case of multilateral liberalization for the majority of countries examined.

While chapter 3 analyzes the effects of regional agreements, the fourth chapter is devoted to options for EU trade policy. The specific aim is to discuss the trade policy options that the EU is facing. The analysis begins with the issue of liberalisation. Given the political problems and institutional shortcomings at the WTO the issue of multilateral liberalization is discussed. In addition, this section provides a thorough analysis of the revised agenda of the Doha round and challenges the EU priority for multilateral linearization. Having said that, the next subsection analyses the unilateral reduction of tariffs.

In the third section of chapter four, the issue of bilateral agreements is raised. It is argued tat the EU has an incentive to conclude bilateral agreements on tariffs. In his context the authors also mention the fact that these agreements may be even larger when other diverting effects and political pressures are present. On the other hand, a transatlantic free trade zone could be another option. However, this kind of cooperation has been repeatedly rejected in the past by governments. The fourth part of this section is devoted to plurilateral variants. After defining plurilateral agreements, the authors analyze the advantaged and disadvantages of such agreements. Finally, the book offers some interesting recommendations for EU trade policy.

In the concluding part of the book, Glania and Matthes provide an overview of each chapter, seek to answer questions that were raised throughout this volume and finally, propose research questions that will be included on the future research agenda.

On the whole, this is an extremely interesting book which adds significantly to our understanding of trade policy issues in the European Union. This book is useful for assessing the economic and political costs and benefits in the crucial area of trade agreements.

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