



European  
University  
Institute

ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

# RSCAS Policy Papers

RSCAS PP 2011/01

**ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES**  
Global Governance Programme

AN EU AGENDA FOR GLOBAL GOVERNANCE

Organised by Miguel Poiães Maduro



**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**  
**ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES**  
**GLOBAL GOVERNANCE PROGRAMME**

*An EU Agenda for Global Governance*

**ORGANISED BY MIGUEL POIARES MADURO**

RSCAS Policy Paper 2011/01

This text may be downloaded only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper, or other series, the year and the publisher.

ISSN 1830-1541

© 2011 organised by Miguel Poiars Maduro

Printed in Italy, April 2011  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy  
[www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/)  
[www.eui.eu](http://www.eui.eu)  
[cadmus.eui.eu](http://cadmus.eui.eu)

## **Robert Schuman Centre for Advanced Studies**

The Robert Schuman Centre for Advanced Studies (RSCAS), created in 1992 and directed by Stefano Bartolini since September 2006, aims to develop inter-disciplinary and comparative research and to promote work on the major issues facing the process of integration and European society.

The Centre is home to a large post-doctoral programme and hosts major research programmes and projects, and a range of working groups and ad hoc initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration and the expanding membership of the European Union.

The **Policy Paper Series** of the Robert Schuman Centre for Advanced Studies complements its Working Papers Series. This series aims to disseminate the views of a person or a group on a particular policy matter, specifically in the field of European integration.

The European University Institute and the Robert Schuman Centre for Advanced Studies are not responsible for the proposals and opinions expressed by the author(s).

The aim of the Robert Schuman Centre for Advanced Studies is to contribute to the public debate by offering views and opinions on matters of general interest.

The EUI and the RSCAS are not responsible for the opinion expressed by the author(s).

## **The Global Governance Programme at the EUI**

The Global Governance Programme (GGP) aims to share knowledge, and develop new ideas on issues of global governance, serve as a bridge between research and policy-making, and contribute the European perspective to the global governance debate.

The GGP comprises three core dimensions: training, research and policy. The Academy of Global Governance is a unique executive *training* programme which combines EUI's top-level academic environment with some of the world's leading experts in the field of global governance and is targeted to young executives and policy-makers, public sector officials, private sector professionals, junior academics, and diplomats. Diverse global governance issues are investigated in *research* strands and projects coordinated by senior scholars, both from the EUI and from internationally recognized top institutions. The *policy* dimension is developed throughout the programme, but is highlighted in the GGP High-Level Policy Seminars, which bring together policy-makers and academics at the highest level to discuss issues of current global importance.

For more information:

[www.globalgovernanceprogramme.eu](http://www.globalgovernanceprogramme.eu)



## Table of Contents

<i>Introduction</i> , Miguel Poiares Maduro .....	1
<i>European Union and Multilateral Global Governance</i> , José Manuel Durão Barroso .....	3
<i>Global Governance</i> , Thomas Biersteker .....	9
<i>Technocratic Temptations and the Global Governance Dilemma of the European Union</i> , Pepper D. Culpepper .....	13
<i>Migration on the Global Governance Agenda</i> , Philippe Fargues .....	17
<i>The European Union and the International Liberalisation of Network Industries: The Case of Transatlantic Aviation</i> , Adrienne Héritier and Yannis Karagiannis .....	23
<i>EU Multilateralism: Rhetoric and Reality in the Context of Global Governance</i> , Christopher Hill, Nadia Klein, Wolfgang Wessels .....	31
<i>The EU and Global Governance</i> , Harold James .....	37
<i>Why the “Second Superpower” Needs a New Discourse</i> , Andrew Moravcsik .....	43
<i>Towards Responsible Interdependence</i> , Kalypso Nicolaïdis .....	47
<i>The European Laboratory for Multilevel Governance of Interdependent Public Goods: EU Leadership for Global Public Goods?</i> , Ernst-Ulrich Petersmann .....	55
<i>EU Governance in the Light of New Regulations Introduced by the Lisbon Treaty</i> , Dusan Sidjanski .....	61
<i>The EU and the Challenge of Global Macroeconomic Governance</i> , David Vines .....	67





## Introduction

Miguel Poiares Maduro\*

Global governance has become the label under which global issues are increasingly being discussed. The term refers to a large variety of actors and both formal and informal institutional alternatives that correspond to emerging forms of governance at the regional and global level. As such, it is a difficult term to define. On the other hand, its success in academic and policy discourse may well result precisely from its capacity to embrace very different global phenomena and institutions. In spite of this, it can be said that the starting point of global governance is a growing recognition that an increased number of issues can no longer be governed at the state level. This leads to the emergence of transnational forms of governance.

This need for global governance arises from three sources. First, globalization, in its many forms, generates increased economic, cultural, social and political interdependence. In turn this increases the potential for mutual externalities among States. One state's policy impacts in, and is impacted by, another state's policy. This challenges political self-determination at the state level and renders necessary an arbitration and regulation of such conflicts. Second, we are witnessing the emergence of transnational forms of power that are not controlled by states but are instead linked, for example, to forms of private regulation or the mobility and economic power of certain actors. These can only be effectively regulated at a level beyond the State. Third, there is a tendency to recognize the existence of global public goods. Some, such as peace and the environment, may be easy to recognize while others, such as trade, much less so. Either way, said recognition of global public goods requires setting up institutions entrusted with their definition, protection and promotion.

If the need for global governance appears to be largely consensual, what the institutional forms of global governance ought to be is much less so. It is possible to identify a large variety of formal and informal mechanisms of global governance. In some areas, international organizations such as the United Nations or the World Trade Organization dominate and even see an enhancement of their powers but, in other respects, less formalized (and also less "egalitarian") forms of international cooperation, such as the G8 or the G20, are taking the lead. There is also an increased network of relations between these different institutional forms of global governance. For example the G20 has set up mandates to be pursued by international organizations that have no formal link to that group of States thus raising particular problems. Furthermore, the increased institutional innovation and pluralism is not limited to State centered forms of global governance. Transnational forms of private regulation and arbitration or informal networks of infra-State actors are assuming growing importance at the global level. There is no clear explanation for the emergence of a concrete institutional arrangement of global governance. Some of these forms of global governance are a consequence of specific sector needs while others appear to be the product of ad hoc bargaining and path dependence in the international order. This institutional pluralism of forms of global governance creates the risk of fragmentation but can also be a source for institutional learning and increased integration at the global level since functional or formal linkages are increasingly being established between the different institutions of global governance. The key issue is their legitimacy.

The transfer of functions of governance to the global level brings with it complex legitimacy questions. There are some who claim that such functions of governance cannot be separated from the State. This is either because democracy at the State level requires political self-determination on certain core functions that can never be exercised outside the political community of the State or because, even if the functions in question do not belong to the core of political self-determination, they

---

\* He is a professor within the European University Institute law department and directs the Global Governance Programme within the Robert Schuman Center for Advanced Studies at the EU.

still require a form of democratic legitimacy that only the State can provide. Others claim that what is needed is a more solid and less functional legitimacy of global governance. They admit the possibility (and, even, the need) to transfer such functions of governance but they criticize the current global institutional arrangements as insufficiently accountable and undemocratic.

Europe's response to the challenges of global governance has been ambiguous to say the least; at times appearing resistant and at others wanting to take the lead. The role that the European Union ought to play in the context of the European response is often presented as crucial: it is stated by many that, in many areas of global governance, European states are better served by a European response. However, at the same time, the Union appears to have neither the instruments nor the political capital to do so. There are also those who see European integration as part of the challenge and not part of the solution. For some, however, the European Union is an example of a successful form of governance beyond the State that can inspire global solutions. The extent to which the European model can be imported to other regions or even transferred to the global level is doubtful but it can probably provide a valuable source of institutional imagination to be used in other contexts. That can, in itself, be a valuable asset for Europe.

The EUI 'Global Governance Programme' aims to increase understanding and knowledge of these global issues and the European response to them. It will discuss different institutional forms of addressing those issues. It will contribute to academic and policy debates on global governance. It also intends to train new generations of scholars, public officials, and practitioners, and to encourage interaction between academics, policy makers, journalists and activists. In short, to increase European critical mass on global governance and the European imprint on the debates taking place at a global level.

In 2011 the Global Governance Programme convenes policy-makers and academics to discuss outstanding issues in the global agenda, such as international trade and the conclusions of the Doha Round, counter-terrorism policies and the financial landscape after the financial crisis. The training dimension of the Programme, the Academy of Global Governance, offers Executive Training Seminars on the central challenges facing private and public stakeholders. Senior scholars from the EUI and other top institutions worldwide develop research strands on key areas such as climate change, global justice, gender equity, regional integration and economics of global governance. For more information see the GGP web pages: [www.globalgovernanceprogramme.eu](http://www.globalgovernanceprogramme.eu)

**From the speech of the President of the European Commission,  
José Manuel Durão Barroso "European Union and Multilateral Global Governance",  
delivered on the occasion of the Inaugural Lecture of the Global Governance  
Programme at the European University Institute on 18 June 2010.**

Today I wish to make the case for the EU's role in reinforcing multilateral rules and institutions at the global level. Multilateralism is the right mechanism to build order and governance in a multipolar world, and the European Union is well-placed to make a decisive contribution.

As you know it has become a common assertion that the first decade of the 21st century has witnessed the gradual emergence of a multipolar world. A system composed of multiple global and regional powers, by a number of relevant institutions and organizations, and by powerful non-state actors.

There are, clearly, some virtues in a multipolar international society. It limits 'hegemonic power', which can often be a source of instability. In the history of modern European political thought, the distribution of power has been consistently treated as a mechanism to limit hegemonic or imperial tendencies. Being in Italy, you are probably familiar with the work of the historian Guicciardini, who in his *History of Italy* written in the early 16th century identified the balance of power with the idea of justice. He praised Lorenzo de Medici, the ruler of Florence, who recognized that the security of his city depended upon maintaining the balance of power within Italy. Guicciardini knew very well what he was writing about, because he had witnessed the collapse of the Italian distribution of power, and its replacement by the Spanish Habsburgs' hegemony.

In the eighteenth century, a diplomatic manual published in Europe referred to multipolarity as "an equal distribution of power among the Princes of Europe as makes it impractical for the one to disturb the repose of the other". And similar views appear in the great multilateral peace treaties. The Preamble of the Treaty of Utrecht, concluded in 1713, says that the "diplomatic settlement" seeks to establish a "just equilibrium". A century later, one of the main figures of the Vienna Congress, Metternich, observed that "European states form a kind of social body that reflect the application of the principles of solidarity and of the balance of power". We find here a view of the multipolar distribution of power as a condition for political freedom, for international justice and for collaboration between states.

However, it would be unwise to overlook the risks associated with multipolarity. A quick glance at European history also provides ample evidence of the dangers of an understanding of multipolar strategies in terms of expansion and competition for predominance. Strategic rivalry between great powers often produced wars in Europe - right up to the middle of the twentieth century.

At the risk of oversimplifying, one can say that a paradox lies at the heart of modern European history: attempts to create a multipolar balance of power, in order to avoid the emergence of imperial or hegemonic states, ended up with violent competition between great powers.

After half a century of chilly bipolar conflict, and a one-decade interval of what has been called a "unipolar moment", the world now seems to be returning to a multipolar configuration. So, the question arises: are we going to repeat at the global level many of the mistakes committed during a great deal of European history? Is Europe's past the world's future?

The 21st century global multipolarity differs in fundamental ways from the past examples of multipolar balance of power. The concentration of power in a number of poles goes hand in hand with fragmentation into multiple centres of power, such as international institutions, nongovernmental organizations, private corporations, global networks, including financial networks and so on.

Globalization strengthens the capacities of non-state actors, and in the process it dilutes the power of the major countries. Contrary to previous centuries, at least in those areas more affected by cross-border flows, the 21st century multipolar world seems to be more inclined to a dilution than a

monopoly of power. There is an increasingly large domain of global politics that occurs outside relations between the major states. Let's look at the current global financial crisis how impressively it shows how relative is the power of democracies or states. It is in fact what some observers call "the domain of nonpolarity".

The rise of new actors and networks and of non-state relations, taking place outside the control of governments, increases the challenges and threats to political authorities and sometimes a democratic rule. As a result, states and international institutions need to cooperate to avoid global disorder.

Simultaneously, globalization reinforces the interdependence of major powers. To a large extent, their political stability and their social and economic welfare depend on their collaboration. Ordered and expected outcomes, crucial to deal with mutual dependency, require the establishment of international norms.

To deal with a growing global interdependence, it is in the interest of governments to create a normative framework that avoids political surprises and strategic misunderstandings.

Therefore, inter-state interdependence and non-polarity stimulate the reinforcement of multilateral institutions.

In this sense, the need to tackle globalization may well function as a constraint to great-power conflicts and as a driver for more multilateralism.

However, experience tells us that the rise of interdependence per se is not enough to ensure international cooperation.

Today, there are worrying signs of disruption and uncertainty, created by strategic rivalry, mainly at regional level. In certain regions, major powers are involved in competition for natural resources. We see some appetite for the creation of spheres of influence. The reality is that unilateral strategies still have a strong influence on foreign policies. In addition, nationalism and a strong attachment to sovereignty are clear tendencies in many great powers. It is far from certain that in the near future we witness the growing of institutional governance at global level. On the contrary: the world could well witness a fragmentation of multilateralism. But I believe that the European Union can play an important role in the reinforcement of multilateral global institutions. And why can we do it?

European integration was a successful attempt way of escaping power politics. The European experience of wars produced by great power rivalries led namely after the tragedy of the World War II to the creation of an institutional multilateral order in Western Europe. This development shows very clearly the difference between multipolarity and multilateralism. The former refers to the distribution of power. The latter expresses a way to use power and to organise power.

The global balance of power may limit hegemonic unilateralism, but it does not by itself stop unilateral strategies by the different poles. Multipolarity may be a necessary condition for global multilateralism, but it is not sufficient. I believe we need a clear awareness of the dangers of unilateralism, and self-conscious strategies to consolidate multilateralism.

And this is where the European experience is quite valuable. In the elegant words of a distinguished contemporary historian, Tony Judt "In spite of the horrors of their recent past – and in large measure because of them – it was Europeans who were now uniquely placed to offer the world some modest advice on how to avoid repeating their own mistakes".

The key words are "to offer some modest advice on how to avoid repeating our own mistakes". In Europe, we know very well where the hubris caused by the excitement of rising power can take us. Having delegitimized multipolar power politics in the European continent, the Union must now work to prevent the emergence of this model on a global scale.

The European Union enjoys a number of strategic advantages, which give it the capacity to shape a positive trajectory in world politics. Our continental size that we have now after the successful

enlargements means we carry a lot of weight internationally. The territory of the Union stretches from the Atlantic Ocean to the Black Sea and from the Mediterranean to the Arctic. The population, around five hundred million, is three times larger than it was in 1957.

The European Union is also one of the most prosperous regions in the world. Its economic power is impressive. It is the biggest exporter in the world. It is the second largest source of foreign direct investment. It is the world's biggest trading power. It is, lastly, and by far, the largest donor of foreign aid, leading the world in development policies.

In a world where circumstances change fast, and where we need to adapt, European diversity may also be a strategic advantage. Such political pluralism gives the Union a diplomatic richness and sensitivity not matched by any other global power. Given the different historical experiences of its members, the Union is better prepared to understand the complexities and contradictions of other parts of the world. This cultural and historical pluralism will certainly enrich the European Union's foreign policy.

So the European Union has a range of strong assets to build on. But we can go further, provided, and this is a very important condition of course, provided Member States are ready to cooperate between themselves and with EU institutions to fill some strategic gaps. Because we have some strategic gaps. We have what I usually call some kind of strategic reluctance. That means overcoming this reluctance to act strategically at global level. And in fact the European Union foreign policy demands strategic and political convergence between Member States, and between these and the institutions. European governments themselves recognize that need, for they have agreed to include in the Lisbon Treaty an Article (32) saying that

"Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene".

The idea of understanding that we have a common interest and common values is of course the defining element to coherence in action, but it is not sufficient.

This is very important from a conceptual and political point of view. Member States, at least theoretically, recognize that there is a shared European interest, and not just a collection of national interests.

In today's world, European countries share indeed vital interests among themselves; Member States achieve more and better diplomatic results at the global level by acting together.

European institutions have a central role in encouraging and promoting the convergence of interests between Member States, by helping national governments to identify what are the common interests; and by designing the right collective actions to pursue and defend those interests.

A real convergence of interests would be a significant step, allowing the European Union to translate its economic weight into political power and influence.

The power of the European Union, if well used, will have a positive influence in shaping this multilateral global order. As I observed earlier, it is not entirely clear whether the multipolar world of the 21st century will be multilateral in its organization. However, for the European Union, a multilateral system of global governance is highly desirable. Indeed, our Treaty states explicitly that "the Union shall...promote an international system based on stronger multilateral cooperation and good global governance" (Article 21, 2. h).

Multilateralism is an aim of the Treaty; it's then what we call rightly a constitutional goal of Europe. We could say that the positive effects of the international rule of law and of multilateral institutions are part of the European Union's DNA. This can be seen as an added-value of Europe to the global order.

The European Union indeed is indispensable partner for global multilateralism. Our experience with multilateral reciprocity, the core of European politics, helps the Union to find convergence of interests with other great powers - a necessary step to reinforce global governance.

This approach reflects a necessary step to reinforce global governance, This approach reflects a paradigmatic change in the way we think about world politics. Many observers, particularly those that emphasise the "European decline", they reveal a zero-sum view of international politics. This explains why, for them, the rise of some countries inevitably means the decline of others. Of course, competition, divergence, disagreements are and will be important elements of political relations. But the European construction is based on the assumption that countries can rise together. And this is indeed our experience. At least in the European continent it reveals a positive-sum view of politics.

This view is also central to the European Union's external behaviour. We are proud, and rightly so, of championing aid for development. We cannot help others to develop and then complain when they do! Actually, the rise of many new powers is, in part, the result of adopting European and Western values, technologies and know-how.

The logical follow-up of this evolution is for Europe to support their integration in the leading international institutions and processes. In the 21st century, the legitimacy of global governance depends on integrating rising powers into shared efforts at international leadership. Again in Europe, we have a long history of sharing political leadership with rising countries. It is what happens every time the Union enlarges to integrate new members.

The G20 is the central global setting where older and rising powers share leadership and find solutions to manage global issues, particularly in the area of the international economy. The meeting of the G20 at the level of Heads of State and Government is indeed the result of a European initiative in 2008.

The European Union is also playing a central role in other international issues. It is leading global efforts to strengthen open trade and fight protectionism and economic nationalism.

The European Union is at the forefront of the global drive to achieve the Millennium Development Goals.

Despite the disappointment of Copenhagen, the European Union will continue to actively engage with its partners to conclude a global agreement on climate change.

The European Union is also a rule generator and rule promoter, in domains such as non-discriminatory regulation, fair competition and intellectual property law, particularly in our neighbourhood. By promoting rules at international level the Union also contributes to global governance.

On top of all this, the European Union can be considered a model for international economic and political cooperation and integration. And the experience that we studied from Mercosur to Asean is an example of how to build a common market, multilateral institutions, supranational legal rules.

Dear friends,

I deliberately sought to pass a positive message to you today. Not because I am unaware of the problems Europe faces and some of its strategic weaknesses, namely the lack of convergence in some areas of foreign policy and security or the problems in terms of the external representation of Europe, or the worrying demographic evolution and what it may mean in terms of economic and social dynamism. I am not saying that because I am just bounced to idealism, even if I believe very often idealists are right and realists (and sometimes the difference between a realist and a scenic is very small) are wrong. What you can see from the history of European integration idealists were right. Schuman was right.

Monnet was right. We could combine a realistic analysis with an ideal. When I think about what happened with former parts of the Soviet Union, which are now proud members of the European Union, you can say that idealists were right. I want you to know that even if sometimes I am frustrated with the way we do things in the European Union, and would like to see quicker and better decisions. Even if I see that many of our citizens face serious economic and social difficulties and the response to that situation is one of the most important duties of political leaders. Even though I believe Europe can be an inspiring force in today's politics.

Of course it is important to restore sustainable economic growth in Europe. I am very that yesterday at the European Council Member States agreed to a programme for growth, Europe 2020, presented by the European Commission. Without economic growth we will not be able to preserve our European model of society, what we call and it is in the Lisbon Treaty 'social market economy' and we will risk our standing in the world. To a large extent, foreign policy starts at home. It has always been like that but I think that today we are in a situation where the line that separates internal from external policy is thinner than ever.

We are at one of those moments where the capacity to act globally is linked to what we do internally. This is one of the reasons why the current European debate on economic governance is so crucial for the future. If Europe does not become more united, it will become more disunited. Things will not stay as they are now.

We are in a dynamic moment. The global crises, the financial stability of the euro, the new institutional setting make this a defining moment, a time at which political leadership is crucial. Leadership from the European institutions, of course, but also from the national governments. As I say very often Europe is not only Brussels or Strasbourg. In Europe national politicians should also see his or her responsibilities in terms of European leadership. This is no time for the Member States to look inwards and fall into a kind of political protectionism.

But none of these challenges justifies what I call the 'declinist thesis' that some Europeans embrace these days. Europe has one of the strongest economies, one of the most progressive social systems, one of the most decent political systems, and one of the most sophisticated diplomatic cultures in the world. So I say to those who would like to embrace the 'intellectual glamour of pessimism' that they may be wrong.

Europeans should be proud of all these achievements. It represents an aspiration: a world ruled by law, and not by force; a world where rights are more important than strength; a world where major powers tackle global problems in concert, and not unilaterally.

In a very complex and challenging 21st century, this might be the most realistic way to organize an interdependent world. This is probably the greatest historical achievement of the European Union. What, over the last two centuries, was seen by many as an ideal, as a dream, is now becoming a political reality.

Thank you for your attention.





## Global Governance

Thomas Biersteker\*

Global governance is a permissive concept. Like globalization, with which it is often associated, the frequency with which global governance is invoked in the scholarly literature and in policy practice far exceeds the number of times it is precisely, carefully, or consistently defined. As a result, the term ‘global governance’ is applied to a wide variety of different practices of order, regulation, systems of rule, and even to simple patterned regularity in the international arena. The term ‘global governance’ is permissive in the sense that it gives one license to speak or write about many different things, from any pattern of order or deviation from anarchy (which also has multiple meanings) to normative preferences about how the world should ideally be organized. Scholars and policy makers alike make frequent references to global governance without specifying precisely what they mean, so to add focus to these important discussions, I would like to make four general observations about the nature and meaning of contemporary global governance. This is done not to foreclose debate and discussion, but to clarify some basic terms, specify their conceptual scope, and identify their most appropriate application and implications.

First, we should not think about global governance in the singular or talk about it as a unitary phenomenon. ***There is no single, unitary, or dominant form of governance in today’s world.*** The way the global financial system is governed – whether by the G-2, G-7, G-8, the G-20, the international financial institutions, or the Basel accords – is profoundly different from the way international security is governed, with its regional spheres of influence, a variety of different forms of political security communities, and the predominance of the Permanent Five (P-5) members of the UN Security Council in the determination of what constitutes a contemporary threat to international peace and security. Global environmental and global health issues are governed by a complex variety of governmental, intergovernmental, and nongovernmental actors (including a number of important private sector actors). Indeed, the governance of domain names in the Internet is largely provided by private, non-state actors. Thus, when we talk about the concept of governance in the global domain, we should not think about global governance as if it were a single or unitary system. There are multiple, overlapping, and at times, even contradictory ***systems of governance*** operating in different issue domains across the globe today. Even within a single issue domain – such as international security, international political economy, or the global environment – there are multiple systems of governance in operation. Consider, for example, the nature of governance in contemporary global counter-terrorism efforts. There are different governance arrangements for countering the financing of terrorism, for intelligence sharing, and for strengthening efforts to keep nuclear materials out of the hands of groups engaged in committing acts of terrorism. In some ways these efforts are mutually reinforcing. In other ways, they are duplicative, offer opportunities for forum shopping (where individual actors can select the forum most conducive to their narrow self-interests), or are sometimes even contradictory of one another.

Even in the period of most significant US hegemony immediately following the end of World War II, there were a variety of alternative forms and players in (as well as resistances to) the governance of different issue domains. The Soviet Union and the Eastern bloc opted out of the system of governance being established under the auspices of the Bretton Woods institutions for most of the period, just as they stayed out of the European regional security system and resisted efforts to engage in collective action under UN auspices. Today there are simultaneously many different forms of governance co-existing with one another, with different institutions, different operational bases, and different

---

\* Gasteyger Professor of International Security. The Graduate Institute, Geneva. November 2010

participants for different issue domains. Contemporary governance arrangements are overlapping and interpenetrating, but at the same time, they can also be fragmented and diffused. One of the contemporary challenges to global governance is whether the density of governance arrangements facilitates or inhibits the purposes of (sometimes defined in terms of the collective goods provided by) different governance arrangements.<sup>1</sup> The different worlds of global governance often tend to be relatively “small” worlds of specialized practitioners operating trans-governmentally,<sup>2</sup> and working in certain instances to form transnational policy networks in conjunction with dedicated NGO activists and highly specialized, policy engaged (and informed) scholars.

Second, *it is important to try to define precisely what we mean when we invoke the term ‘global governance.’*<sup>3</sup> Global governance is often defined in terms of what it is not – neither a unitary world government or world state nor the disorderly chaos and anarchy associated with a Hobbesian ‘state of war of all against all.’ It is constructive to think about global governance as an inter-subjectively recognized, purposive order at the global level. It is a purposive order which defines, constrains, and shapes actor expectations and conduct in an issue domain. Its varied purposes might be to manage conflict, to facilitate cooperation, to reduce uncertainty, to procure resources, and/or to address widely perceived collective goods problems.

Governance connotes a *system of rule*, or rules that operate on a global level. These rules can either be formal and embodied within formal institutions, or they can be informal and reside inter-subjectively among a population or a set of key institutional actors. Global governance entails decisions that shape and define expectations (‘controlling, directing, or regulating influence’) at the global level. There can be different degrees of institutionalization associated with different forms of governance, and there is much debate about whether formal or informal institutions are necessary for governance. It is not required, however, that these rules be universally recognized as legitimate, but only that they be widely shared, recognized, and practiced on a global scale (on multiple continents) by relevant and important actors. Most actors tend to be norm takers, rather than norm makers.

There are two elements of this conception of global governance that should be emphasized. One is that global governance entails a social relationship between some authority and some relevant population that recognizes and acknowledges that authority as possessing a certain degree of legitimacy. Governments can persist without widespread popular support, but governance requires the performance of functions necessary for systemic persistence. Governance should not be equated with government, but with the functions of government.<sup>4</sup> The other element is that governance can exist in the absence of an easily identifiable agent deliberately governing. The word ‘governance’ is derived from the Latin word *gubernare* (which means both ‘to steer’ and ‘to regulate’).<sup>5</sup> While governance typically connotes some agent who *steers* the process in most of the scholarly discourse and much of the popular discussion of the phenomenon, it also allows for *self-regulation*. In this sense, a market or set of market mechanisms can be said to govern, be allowed to govern, or be relied upon to govern in some domains. The market can be constituted as authoritative by the public statements (speech acts) of leaders of important states and private institutions when they suggest that they are ‘governed’ by its behaviour.

---

<sup>1</sup> Marc L. Busch, ‘Overlapping Institutions, Forum Shopping, and Dispute Settlement in International Trade,’ *International Organization*, 61, Fall 2007, pp. 735-61.

<sup>2</sup> Anne-Marie Slaughter, *A New World Order*, Princeton: Princeton University Press, 2005.

<sup>3</sup> Much of this definitional section is adapted from Thomas Biersteker, “Global Governance” in Myriam Dunn Cavelty and Victor Mauer (eds.) *Routledge Companion to Security*, New York and London: Routledge Publishers, 2009.

<sup>4</sup> James Rosenau, ‘Governance, order and change in world politics’, in James Rosenau, and Ernst-Otto Czempiel, (eds) (1992) *Governance without Government: Order and Change in World Politics*, Cambridge: Cambridge University Press, pp. 1-29.

<sup>5</sup> *Oxford English Dictionary, Complete Text, Volume I (A-O)*, Oxford: Oxford University Press, 1971, p. 1182.

Third, *not all systems of governance are necessarily 'good' or normatively desirable*. A great deal of discussion of global governance implicitly assumes that governance is normatively a good thing. This is, at least in part, because there has been so much attention to 'good governance' in the domestic realm. The global governance literature in general (for reasons already cited above) often assumes that governance and order, as opposed to anarchy and chaos, must inherently be normatively a good or desirable thing. But this is not necessarily the case. An issue domain can be governed poorly, but it is governed nonetheless. Thus we should turn our attention to articulating criteria for evaluating the quality of governance.

Global governance can and should be evaluated according to a number of different normatively derived, defended, and distinguishable criteria. First, how *inclusive* is a particular system of governance? Are all significant populations of the world included in the system of governance? The United Nations provides an institutional venue for an inclusive system of governance, with participation of 192 Member States. The emergence of G-20 as an institutional venue is an improvement over the G-7 or G-8, but it is still far less inclusive than the UN.

Second, and related to the first criterion, how *representative* is the system of governance operating in a particular domain? It is one thing to be inclusive, but quite another to be genuinely representative, something which has significance for the broader legitimacy of the system of governance. Whether different populations are able to express themselves and influence the core agenda is an important basis for determining how representative a particular governance arrangement turns out to be. The quality of the UN as a venue for security governance is more limited than it is for other issue domains, since the UN Security Council (which has the power to determine what constitutes a threat to international peace and security) is dominated by the five permanent Member States who possess a veto in its deliberations.

Third, a system of governance can be evaluated on the basis of its *adaptability*. That is, can it accommodate changes of power distribution and/or normative developments over time? The system of global security governance under the UN has not proven to be particularly adaptable, given the fact that Security Council membership reform remains deadlocked over ways to accommodate significant changes in the global distribution of economic, financial and military power of Member States. The UN Security Council has done a relatively better job in adapting to normative change, as it has altered its conception of threats to international peace and security over time to accommodate post Cold War challenges to peace. It also joined the UN General Assembly in altering the operational meaning of state sovereignty, by including the 'responsibility to protect' among the rights and responsibilities of sovereign states. More generally, the UN system has also served as an important arena for the articulation of new normative concerns, from the rights of women and children to concerns about the global environment. It is somewhat ironic, but important to note, that international organizations tend to be more adaptable (concerned, as they are, with their own institutional survival) than many prevailing global governance arrangements.

Fourth, governance can and should be evaluated according to its *efficiency*. Is a particular governance arrangement able to provide public goods that cannot be delivered at the domestic level or by other institutions at the regional, transnational, or global level? And do they do so at a relatively minimal, or sustainable, cost to participants and potential beneficiaries of a system of governance? The efficiency of a governance arrangement is important, because as defined above, governance requires the performance of functions for its continuation and persistence in order to maintain its legitimacy.

Fifth and finally, the *fairness* of a governance arrangement is a critically important aspect of the quality of governance in a particular domain. The extent to which a particular governance arrangement is equitable in terms of the distribution of goods and services, and/or the extent to which it is equally accessible in terms of due process for those who are affected by, or who might wish to challenge the governance arrangement, are both key aspects of fairness and thus important for assessing the quality of governance overall.

Different global governance arrangements can (and should) be compared and evaluated over time according to these five criteria. Not all governance is good governance. Indeed, there may be some instances in which poor governance may be worse than no governance at all.

Fourth and finally, although the realm of global governance has traditionally been occupied predominantly by states and intergovernmental organizations, *a variety of different institutional actors, particularly non-state actors, are increasingly playing a salient role in contemporary global governance*. They articulate alternative forms of governance, play active roles in formulating agendas, create spaces where a purposive order of authoritative sets of rules can be articulated and established, and generate ideas that governmental and intergovernmental actors act upon.

At times, the ‘authority of expertise’<sup>6</sup> of some of these actors enables them to play an active role in governance itself. The independent assessments of non-governmental human rights organizations are important for evaluating (and potentially challenging) existing inter-governmental governance arrangements conducted largely by states. Non-governmental actors also participate in a variety of different transnational policy networks. They are not found in the form of governance provided by ‘the international society of states’ and are largely invisible in the governance arrangements provided by an individual state’s hegemony or by many international regimes, but they are often principal players in the production of international norms and institutions.

### **Implications for Europe’s Role in Global Governance**

The conception of global governance articulated above – as multiple, inter-penetrating, and overlapping systems of governance, as entailing a socially constructed, rule-governed relationship between some recognized authority and a relevant population, as varying in its basic normative quality, and as increasingly involving non-state actors – has implications for Europe’s potential role in the governance of different global domains.

Building on its resources, its commitment to the rule of law, and its experience with the creation of institutions of regional governance, Europe has the potential to play a leading role in the design of the governance arrangements for many important global domains. The European project itself is an experiment in complex, multi-layered governance and has experienced both significant achievements and periodic setbacks in governance on a regional basis. There are important lessons here for the governance of issues at the global level.

There are also important global issue domains in which Europe has provided significant leadership in recent years – from strengthening the rule of law in countering threats of global terrorism to enhancing global peace-building efforts, promoting regional security communities, sponsoring global institutional reform (particularly within the UN), and supporting global development goals.

The normative goal of creating more inclusive, representative, adaptable, efficient and fairer governance arrangements is not beyond reach in many important issue domains, but Europe cannot accomplish this normative agenda on its own. It will require not only a unity of purpose and an attentive focus from Europe, but also an ability to resist narrow interest-driven conceptions of global governance and a genuine willingness both to listen with an open and flexible mindset and to begin to respond flexibly and creatively to the governance needs and concerns of the rest of the world.

---

<sup>6</sup> Rodney Bruce Hall and Thomas J. Biersteker, *The Emergence of Private Authority in Global Governance*, Cambridge : Cambridge University Press, 2002, p. 14.

## Technocratic Temptations and the Global Governance Dilemma of the European Union

Pepper D. Culpepper\*

There are two ways to think about the challenges global governance poses to the European Union. The first is to think of the EU as a facilitator of expert analysis on the hard problems that confront the community of nations, such as how to address climate change or the international flows of people over the coming years. The EU has hard-won institutional experience in developing programs of multi-lateral governance: it has built a free market for goods and services and a common currency for many of its member countries, and it has empowered strong institutional executors of these programs in the Competition directorate of the Commission and the European Central Bank, working within a framework overseen by the European Court of Justice. Given a mandate by politicians to address multilateral problems, these institutions have mobilized impressive intellectual resources behind the pursuit of politically established goals. This institutional history provides ample reason to look to the EU to take a leadership position in the development of multilateral ways of dealing with the newer challenges of cooperation discussed under the rubric of global governance.

The second way to think about this issue is less sanguine. It considers problems of global governance not merely as *problems* to be solved – which is what experts in the competition directorate are good at – but as problems to be *governed*, presumably through a democratically legitimate institutional architecture. Here, the achievements of the European Union in market-making and macroeconomic governance are hotly contested. Many argue that the ECB and the ECJ stand far removed from democratic politics, much farther removed than their notionally independent counterparts in other national democracies outside the EU. Others note that insulation from the populist passions of democratic politics is the best way to make a market and govern a currency, and that the EU simply does this through a multilateral structure still approved by democratically elected member-governments. This is a long debate, but the point on which these contending sides agree is that the extent of multilateral problem-solving through the EU requires democratic legitimation of some sort.

When people – especially the sort of experts assembled in this volume – talk about the challenges of global governance for the EU, they almost invariably talk from the first perspective. They are aware of the second, and some of them are possibly concerned about it. But they do not view the second perspective as one that will lead to productive answers to the first. These experts want to roll up their sleeves and begin talking about how to solve problems, not to pursue endless discussions about what sort of institutions allow for democratic accountability. That is to be considered *ex post*, after the technically “right” solution – for dealing with migrant flows, or global warming, or runs in the bond market – have been addressed. Politics may well affect the outcome chosen, of course; experts are not especially naïve people. But politics is conceived as a set of obstacles to be got around after the adults have figured out the best way to do things.

This tension already confronts the European Union today. Global governance issues exacerbate these problems in dramatic fashion, because they will require the EU to move beyond its traditional economic competencies to devise solutions in which key questions about democratic legitimacy intrude. Recall that the EU only cares about the global governance agenda because it involves problems that are challenging for politics in many of the member states; but some of these solutions may be best pursued through the intergovernmental structure of the EU. Experts and

---

\* European University Institute. October 2010.

intergovernmental structures are the long suit of the EU, and together they allow member-states to do things they cannot do as well, or even at all, individually.

Global governance issues raise the costs of such solutions, however. Issues such as climate change and migration are the technical extensions of issues that have the potential to reshape domestic politics in dramatic fashion (namely, the environment and immigration). These are unlike the sorts of dry, technical economic issues on which the EU built its name and its reputation for technocratic élan. Even trade politics, which might be the closest analogue in the EU's current policy set to contemporary problems of global governance, is unlike these issues. Trade is an area in which compromises and side-payments can be struck because the national interests are clear and policy experts could work within them. Trade deals involve losers and costs; they were and continue to be the subject of strident negotiations. But they do not fundamentally shake up the political space in member countries.

Migration and the environment *do* have the potential to reshape the political sphere. They are at the same time issues with deep economic consequences and with consequences for non-economic determinants of political party competition. That is, limits on carbon emissions create problems with familiar distributional angles (what will German car manufacturers accept?). This sort of problem is one EU officials can handle in their sleep, and they are good at it. But the German Green Party takes issues on climate change that derive not from the economic consequences of the decision, but from the character of a political outlook that systematically privileges sustainability. So positions on climate change do not have more or less the same effect on Germany depending on which party is in power (as would have been the case with trade): national member states argue about these policies themselves.

An exactly analogous case could be made for migration flows. We can see in the rise of new party challengers to existing systems in Sweden, in the Netherlands, and elsewhere how much migration flows can disrupt national political systems. Migration has economic consequences for politics, as it provides hopeful contributions to economic growth and a way to ameliorate the difficult pension problems facing many member-states. However, its non-economic consequences are its most salient political characteristics: issues of national identity and security are simultaneously intertwined with the politics of migration. It is a politically toxic combination. This sort of political toxicity is not something that experts are adept at dealing with in their deliberations.<sup>7</sup>

This creates a dilemma for experts with high-minded and deeply considered proposals in the global governance arena. These experts generally dislike democratic legitimation, though they rarely say that. They regard their deliberations based on expertise as the proper way to decide an issue. Opening a discussion about complex governance problems to the wider public of many differently functioning democratic states appears to be the road to chaos. And indeed, it often is.

Their solution to institutional uncertainty was captured in the words of Rahm Emanuel, the former chief of staff to American president Barack Obama, speaking about the financial crisis the Obama administration faced upon taking office. "You never want a serious crisis to go to waste," Emanuel told journalists. By this he meant that politically difficult changes become possible at moments of great political turmoil, and this is when the changes should be made in the institutional sphere. The most recent European example of this dictum was the response of governments and the ECB to the Greek financial crisis, which seemed to threaten the Euro. Radical changes in the way the EU could intervene in the affairs of its member-states were decided, and these decisions probably headed off a market crisis. But even if they "worked" – technocrat-speak, again – it is not clear whence their

---

<sup>7</sup> I leave aside for the time being the political problem of incorporating the voices of civil society actors on various scales which have their own set of political concerns. I regard their inclusion as the less challenging part of the global governance political agenda, even though there are serious normative questions that I will leave to political philosophers about the inclusion of affected interests.

political legitimacy derives. If member-states opposed making such changes for long, what changed in their make-up that made these dramatic changes suddenly acceptable?

John Maynard Keynes once remarked, “When the facts change, I change my mind, sir. What do you do?” It may well be the case that the facts around the maintenance of the Euro changed in dramatic fashion in response to economic pressures in the spring of 2010. If the situation has changed, then democratic politicians, presumably, will go back to their national publics and explain how these changes necessitated institutional innovation. German politicians may emphasize how they fought to protect the independence of the central bank even these innovations tested the extent of that independence; French politicians may go back to voters and say they have finally got the Germans on the road to some sort of economic governance at the EU. The betting here, however, is that neither French nor German politicians will spend a lot of time talking about institutional innovations decided this spring. They don’t see how holding that conversation will translate into votes on election day, and they do perceive risks in trying to open that discussion.

In the long term, this is bad for democratic politics. The relays between national political debates and EU governance initiatives are often tenuous, except when they are non-existent. Political parties do not have the incentive to play this role; interest groups (whether of employers or labor, or of environmentalists or consumers) have similarly shown little capacity to provide a relay to democratic politics. This relay would be a two-way street: it would talk to citizens about why the facts may have changed (that is, it would inform citizens about what is going on). And it would also carry information back to intergovernmental negotiations about the response to citizens of these institutions.

Even those who are unconcerned about the long-term of democratic politics – or who believe that these concerns are exaggerated – should be interested in the second function of carrying information from national social groups back to multilateral negotiation. The minimal case to be made here is that experts will be able to deliberate on the basis of better information. Interest groups can bring information about political preferences to which government representatives may be insufficiently attuned. But they can also bring in local knowledge about how high-minded deliberations on large issues will confront concrete problems on the ground. Part of the problem-solving of global governance is how to connect the “global” level at which such issues are discussed to the “local” level at which such issues are experienced politically. Research on political parties has shown that this capacity often eludes party that used to be more deeply enmeshed in local societies. Thus, for informational reasons alone, experts have good reasons to be concerned about their relays to national polities.

However, I have made an argument that this is more than an informational problem; it is a big political problem. Global governance touches central compromises in national politics. The technical resolution of such issues cannot be divorced from the confrontation of their political consequences. Experts, so good at the technical, will be woefully inadequate to this second problem of global governance. They can say that is the province of politicians, but when is the last time politicians went to the mat in their national arenas to defend a Brussels compromise? Politicians and parties are having trouble adjusting to this role; if experts want global governance issues to be able to give deep thought to the technical problems of migration, they are going to need to incorporate political views on the costs of migration that come from deep within national political societies. I have proposed interest groups as one carrier of such views, but one could imagine others. The point is that, somehow, global governance requires as much attention to its governance structures as to its global problem-solving pretensions.

What does this mean for development of the EU agenda for global governance? It means, I believe, that the EU faces a difficult trade-off: on the one hand it can go for “low-hanging fruit” on the agenda, trying to insert itself as a player in international negotiations about emissions goals and the like. This response would require nothing new, but it would probably mean a very incomplete engagement with the real global governance agenda. Because it is politically easy and requires nothing new, it has much

to recommend itself to national politicians exhausted with institutional innovation. The problem is that going after only the low-hanging fruit will not carry the global governance agenda very far.

A more radical strategy, which is what technocrats would love, is to let the experts try to get together and propose a broad new architecture for discussions over flows of people (for example). If such discussions were to continue to be divorced from political deliberations, though, they would still be subject to political sanctions. This is the sort of expert-talk that would collapse at the first setback in a regional election in some member-state where these issues begin to be addressed in concrete political terms.

What I am arguing for here is a certain degree of politicization of global governance problems. However, two caveats should be underscored. First, this is not an argument to give political parties a greater role in such deliberative forums, which is what some other scholars have proposed under the heading of politicization. To many experts, this is anathema: “politicizing” problems at the domestic level leads to populist, simplistic solutions, rather than careful policy analysis. There is truth to this claim. But populism is now a feature of politics in most EU polities, and the EU is increasingly the object of populist anger. Where party politics can incorporate divisive questions into domestic debate, it would offer a relay between EU policymaking and national legitimation. Yet parties show little inclination or even capacity to play this role. My tentative suggestion is that interest groups – not conceived as political lobbies (though they are always that too) – can better play the explanation and information transmission roles required by the new demands of global governance than can political parties.

Second, though, I am not entirely convinced that interest groups can solve the problem either. As an expert myself, I am confident the problem I am identifying is well-specified, but I am not sure the existing interest group architecture will be able to solve it. To the extent that I would be willing to offer concrete policy advice, therefore, I would follow two notions: be experimental, and be incremental. Experiments are needed to find out what the best way might be to reconnect high-level deliberations about problems of global governance to concrete issues of real politics in the nation-states, which is where political identities are still primarily located. And radical change is likely to fail, because we do not yet know which experiments are likely to be most successful in rebuilding relays between governance institutions and political society.

What we can conclude with some certainty is that the emerging issues of global governance are too politically fraught to be handled in a solely technocratic manner, at least if the agenda is to move beyond low-hanging fruit. The EU cannot lead in this area without developing some additional relays to deliberation within political society in the member states. Paradoxically, part of the global governance agenda of the EU must involve of a rearticulation with domestic politics, if it is to be an agenda worth speaking of.



## Migration on the Global Governance Agenda

Philippe Fargues\*

The world has entered a new era of mass migration. The previous one which receded a century ago shaped, inter alia, the modern demography of the Americas. Global migrants are estimated today at 220 million – 3.1% of a 7 billion world population– and their annual remittances stand at between 300 and 400 billion dollars. All nations have migrants, either emigrants or immigrants, and generally both, who represent, at the same time, a hope and a worry with regard to major societal issues such as welfare, progress, cohesion, security and rights. As international migration is more frequent and, therefore, more visible in local communities and society more generally, then so international migration has become a domestic issue and a matter of internal politics.

As a general rule the same movement of migration is regarded differently by source and host states and opinions: with emigrants as heroes and immigrants as intruders. Migration is the result of an imperfect world wracked by inequalities that set people on the move. At the sending end there is the belief that international migration will improve the lives of families and communities whilst, at the receiving end, there is often the fear that migrants will bring some of the world's misery to the world's wealthiest nations. At the same time, there is a widely shared sense that a world without international migration would be a dangerous place as migrants are bridges, not only between labour markets and economies but, perhaps more importantly, between systems of values and cultures.

### Tensions in the governance of international migration

While international migration has become a matter for governance in most nations, strangely enough its global governance still needs to be established. Governing international migration is complicated by a number of tensions. To name just a few of these:

➤ *Tension between present and past migration*

International migration has considerably increased over the last two decades, often in response to the booming demand of expanding economies in destination countries. At the same time it has diversified in response to cheap long-distance communications making the whole world, and not only a geographic neighbourhood, the true environment in which international migrants originate. As a result, migration has brought unprecedented cultural diversity at the receiving end. With the emergence of multicultural contexts, integrating migrants and granting their sons and daughters equal opportunities to those of natives has become a challenge. The crisis of the most advanced economies has recently exacerbated this challenge. With growing unemployment at home, policies that would open opportunities for further labour migration have come to be seen as contrary to full employment among natives, as well as among migrants of older waves. Governing migration, therefore, has turned into a series of thorny arbitrations between immigration policies, which are destined to manage new flows of migration, and integration policies, which are destined to accommodate older ones.

➤ *Tension between migration and mobility*

Circular migration, which brings migrants for a limited duration to the host labour market then returns them back to their home country, has aroused much interest among policymakers in host

---

\* He is currently the Director of the Migration Policy Centre at the European University Institute, the founding Director of the Consortium for Applied Research on International Migration (CARIM) and co-Director of the Florence School on Euro-Mediterranean Migration and Development.

countries. It is seen as a way to match sector-specific shortages on the receiving labour market, while maintaining social cohesion and minimizing any cultural frictions that may arise from the long-term settlement of migrants. It is also designed as a tool for deterring irregular migration by opening a new window for legal migration. Circular migration, lastly, is ‘sold’ to source countries as a guarantee of ethical recruitment without the risk of brain drain, as well as an avenue for brain gain as the migrant will return to their home countries with additional skills. However, it is unclear to what extent this model can be implemented on a large scale without harming the receiving society. Indeed, by granting migrant workers a short-term status with no prospect of citizenship and, therefore, no interest in sharing a common project with their hosts, policies promoting circular migration may create a dual social system and collide with another objective, that of building a cohesive society. Given the size of replacement migration that may soon be needed to respond to demographic changes in major receiving countries, circular migration will, at best, offer a partial solution. Former policies favouring settlement should not be relegated but should coexist with those favouring the circulation and return of migrants.

➤ *Tension between structural forces and circumstantial challenges*

No government can ignore the fact that a number of long-term, structural, factors will most probably make migration increasingly frequent and necessary in the coming decades. First, global demographic trends will transform the distribution of world population between, on the one hand, less developed predominantly sending regions and, on the other, more developed and predominantly migrant-receiving ones. In the former, unprecedented numbers of young adults will put a great strain on economic, social and political systems, while in the latter the pressure will be exerted by unprecedented numbers of the elderly citizens. Second, economic divides between nations, which push and pull migrants across borders, will not vanish, even though one cannot fully predict what direction and magnitude they will take in the future. Third, climate change will gain momentum and there is no compelling reason why peoples gradually faced with unbearable environmental conditions should not move towards more inhabitable regions, if necessary across international borders. Yet immediate concerns – now exacerbated by the economic crisis and rising unemployment in much of the developed world – encourage governments to contain migration with a view to protecting their own citizens and relieving public opinion. Paradoxically, democracies have rarely been as reluctant to accept new migrants as they have been in recent years, precisely when demographics speak in favour of migration.

## **The lack of global governance of international migration**

Migration has become global but there is no global regime to govern the international movement of persons: there is no migration law that could reasonably be described as ‘international’ (with the exception of international refugee law) and no international institution to regulate the movement of persons that is comparable to those for the movement of goods, services or capital. Indeed, several international organisations deal with migration, but no single organisation does it in a holistic way. Either they have no clear mandate on migration or they have a mandate which is specific and limited to particular sub-groups of migrants or specific aspects of their mobility, or they do not enjoy global membership.

The Office of the United Nations High Commissioner for Refugees (UNHCR) has a mandate to protect and assist the forcibly-displaced – including refugees, asylum seekers, internally displaced and stateless persons – and to find durable solutions through voluntary repatriation, local integration or resettlement in a third country. UNHCR insists that its mandate does not cover migrant workers and their family dependents who fundamentally differ from refugees with regard to international law. Despite the fact that the number of refugees worldwide has considerably decreased over the last decade (from 13.2 to 10.5 million between 2000 and 2010 according to UNHCR), the total population of concern to UNHCR has increased during the same period from 22 to 34 million, as a result of

soaring numbers of internally displaced persons, partly in conjunction with increasing difficulties for uprooted peoples to cross international boundaries. UNHCR has recently broadened the scope of its action to cover an emerging category of movements that must be approached in a protection-sensitive way: namely, the flows of 'mixed migration' comprising refugees and irregular migrant workers who travel alongside each other and who use the same routes and smugglers. There is, indeed, a risk that states at the receiving end deal with flows of mixed migration as if they were entirely made up of migrant workers trying to enter their territories illegally and that they do not consider the claims of legitimate asylum seekers.

The International Labour Organization (ILO) deals with international labour migration in the broader framework of standards, employment, social protection and social dialogue. It is the only United Nations agency with a constitutional mandate on migration, including the preparation of international conventions and other tools to promote a rights-based approach to labour migration. But its mandate is limited to migrant workers, which have been estimated at around 100 million individuals in 2010.

The 1990 UN Convention on the *Protection of the Rights of All Migrant Workers and Members of their Families* is an international tool meant to lay down the foundations for a rights-based approach to all kinds of migration movements, including workers and family dependents, in regular as well as irregular situation. However, twenty years after its adoption by the General Assembly of the United Nations, it has been signed by only 43 states that are mainly senders of migrants, but by no major receiver of migrants (with the exception of Libya). Immigration states in Europe, North America, the Arab Gulf, East Asia and Oceania are not willing to sign a text that would limit their sovereignty regarding the control of who enters their territory and for what purpose, and to recognise rights other than basic to irregular migrants.

Several organisations operate outside the United Nations system. The International Organization for Migration (IOM) is an intergovernmental institution that counts 127 member states and 17 observer states and provides services and advice to governments and migrants regarding issues of migration and development, facilitating migration, regulating migration and forced migration, but it has no mandate to legislate. The Organization for Economic Co-operation and Development (OECD) works on international migration, in particular on the monitoring of migration flows and policies in OECD member states and conducts research on migration in relation to labour markets, demographic change and economic growth. Lastly, the International Centre for Migration Policy Development (ICMPD), an intergovernmental organisation with 11 member states, all European, provides services in the domain of multilateral cooperation on migration and asylum, including inter-state dialogue in the debate on international migration and capacity building to help governments in tackling migration-related challenges.

Furthermore, numerous consultative processes have recently been launched to address the governance of migration by fostering an informal exchange of views between governments and the establishment of operational cooperation between them. At world level, the Global Forum on Migration and Development aims at linking international migration and the Millennium Development Goals while strengthening the human development dimension of migration policies. At regional level, one might mention the Budapest Process (Europe and the Former Soviet Union), the Puebla Process (Americas and the Caribbean), 5 + 5 Dialogue on Migration in the Western Mediterranean, the Colombo Process in Asia, etc. Consultative processes may be efficient in increasing international coherence in policymaking on migration issues, but they do not lead to norms and conventions.

To make the global governance of migration still more difficult, there is a fundamental legal asymmetry in migration. While emigration is a right enshrined in international law (Article 13 of the Universal Declaration of Human Rights recognises the right of individuals to leave any country including their own), no law provides for the corresponding right to enter another country, for

legislating on immigration is considered a matter of sovereignty. As a result people are free to leave the country where they live, but they may have nowhere else to go.

The contradiction between emigration as a right and immigration as a privilege is overcome in practice either by limiting, if not denying, the right to leave a country or by recognising the right to immigrate. The first happens with policies tending to externalise border control by vesting actors in third countries, whether public (e.g. the police of a foreign state) or private (e.g. an air company), with a mandate to filter emigration. The second response corresponds to the creation of areas of free circulation, such as the Schengen Agreement in Europe or the Economic Community of West African States (ECOWAS).

The brief review above shows that, building an international order to govern migration, including a proper *International Migration Law*, is not yet on the global agenda. On the contrary, labour migration and migrants' integration are often governed at sub-national levels and local government organisations are the best placed to develop and implement migrant employment and integration policies. As such, the global governance of migration may mean international organisations supporting national and local governments in governing migration.

## **A Role for the EU**

The EU, which is the world's second receiver of international migrants, will need increased and sustained flows of new migrants to address its future demographic imbalances (lack of labour force, in particular at low- and mid-skilled levels) as well as to take up the Lisbon-agenda challenges (lack of talents). It should not content itself with an internal approach to migration-related issues. Rather it should take the lead in designing a global vision of what governing migration globally will mean in the next years.

- A long-term goal should be to progressively build up a genuine International Migration Law. National legislation in EU Member States might help inspire international efforts in this regard.
- In the short-term, the EU could play a decisive role in building practical tools to ensure that migration is not primarily left to the market's laws. The EU could have a comparative advantage in taking global initiatives in the following directions:
  - Inventing tools for protecting the rights of both migrants and natives; in this regard, migrants in irregular situations should not be considered criminals if their only breach of law is illegal entry, stay or work. On the contrary, establishing non-discriminatory labour rights that apply to all migrants would be the best antidote against employers' interest to recruit irregular migrants and the ensuing unfair competition with natives and regular migrant workers.
  - Putting in place systems of early warning to anticipate flows of mass migration, from refugee movements to climate-change-induced migration but also ordinary, voluntary, economic migration. In this regard, it would be important to establish schemes of cooperation for migration-related issues beyond the EU, with source countries for potential mass migration.
  - Restoring a balanced vision of international migration in which migration is neither a panacea for development at the sending end nor the number one threat to security and identity at the receiving one; in this regard, it is crucial to raise public awareness on what can and what cannot be expected from migration.
  - Last but not least, constructing a Global Observatory of International Migration. Governing international migration requires unbiased knowledge of the phenomenon, which by definition spans at least two countries, and often many more. It requires looking at both ends of migration: not only its destination (in Europe) but also its origin and places of transit (in Europe's neighbourhood and beyond). The EU has

insisted that its approach to migration should be global and that it should take into account the ramifications of migration in countries of origin and transit as well as in those of destination. It certainly has the scientific resources as well the connections in third countries necessary to build up such a global observatory.

## **Conclusion**

Changes in global divides between nations are the backdrop behind increasing international migration. The divide is widening with regard to access to material and non-material resources, well-being and opportunities making migration increasingly suitable for many individuals. And, simultaneously, the divide is narrowing with regard to access to knowledge, capabilities and, therefore, employability abroad, making migration increasingly possible. In other words the reasons for migration as well as its feasibility are growing in parallel. At the same time, extended networks of former migrants and easy travel are erasing the cost of distance and are making migration a global phenomenon. It is more than likely that these trends will continue in the foreseeable future. At present, international migration is governed by each nation in isolation. There is no nascent global system. One of the reasons for this lack of a global system is that migration is regarded, and consequently dealt with, in two contrasting ways according to which end of the process is considered. Reconciling the visions of source and host countries, i.e. restoring the uniqueness of the migrant person through a rights-based approach, would be a necessity in dispassionately governing migration.



## **The European Union and the International Liberalisation of Network Industries<sup>1</sup> : The Case of Transatlantic Aviation**

Adrienne Héritier and Yannis Karagiannis

We have been focusing on the role of the EU in the creation and regulation of international markets in the network industries. In the last decades these markets have developed at a high speed in sectors in which previously markets did not exist or were dominated by public monopolies. The case studied at present is civil aviation, more specifically, the liberalization of the transatlantic aviation market (Karagiannis and Héritier 2011a; 2011b). The sectors studied in earlier work are rail transport, telecommunications and energy (Héritier et al 2001; Coen and Héritier 2001). How did the attempts at market creation and regulation come about and what was the role of the EC/EU in creating and regulating these global markets? Did the EC/EU take the initiative or did it react to the economic and political pressure of other countries, in particular the United States? To what extent have market creation and regulation been a response to new technical innovations and the thereby created new market opportunities?

We go on to study the specific institutional forms which the liberalization of transatlantic aviation took. In general terms an international mutual market opening/ regulation may be conducted as *bilateral* negotiations or as *multilateral* negotiations. Multilateral and bilateral agreements may also co-exist. We explain why specific institutional forms were chosen and, in the case of a co-existence of both multilateral and bilateral agreements, how they impacted upon each other. They may be mutually reinforcing, competing and/or undercutting each other.

From an intra-EU perspective we analyze why the Commission obtained the mandate from Member States to engage in such negotiations with third countries. Was this a contested process? Why and what determined the outcome? What was the role of the ECJ in this process? Are there instances of split responsibilities where both the Commission and Member States are empowered to conclude agreements of market opening /regulation (mixity principle)? Why did the US push for more and bilateral agreements with individual European governments such as to provoke a unified European response which took the form of the entry of the European Union (EU) on the stage? Which EU internal dynamics set member governments under pressure to allow the European Commission (Commission) to negotiate on their behalf with the US? Finally, which were the dynamics and outcomes of negotiated agreements of liberalization? Which restrictions were the negotiators subject to and how do they deal with these restrictions? The Commission may be subject to internal restrictions, i.e. member governments' objections to specific measure and may use these objections ("my hands are tied") to wield more bargaining power. But so does its negotiating partners, pointing to the restrictions imposed by Congress.

By focusing on aviation we observe important on-going economic, political and legal transformations in a policy area which was long thought to be resistant to pressures for change. It offers insights in aspects of a changing international political economy reflecting liberalization, conflicting domestic preferences, pressures to manage globalization, competing arguments about environmental degradation, differential capacities for collective action, complex preference aggregation mechanisms, discourses about the national interest, protracted international negotiations, agreements and institutions to implement them, compensation packages to politically consequential lowers and other important aspects.

---

<sup>1</sup> The research is conducted by Adrienne Héritier (EUI, Political Science), Yannis Karagiannis (Institut de Barcelona de Estudis Internacionals), Hans Micklitz (EUI, Law), Kiran Patel (EUI, History).

In the following we will discuss why a liberalization of the civil aviation market was set into process which role the European Community played in this context and which international institutions were negotiated in order to create and regulate this market.

## **1. Emergence**

The transatlantic aviation market between Europe and the United States is currently worth more than €15 billion per year. It is not only the biggest international aviation market, but also an important source of revenue and jobs for airlines, the contractors, business firms, engaged international trade, and local communities alike. Yet, for half a century, this market was deliberately kept underdeveloped. Between the mid-1940s and the mid 1990s, transatlantic trade in air transport services was one of the tightest-regulated markets in the industrial world. For reasons pertaining to national security, legal consistency, and political prestige, national governments would not let these market work freely. Operating multilaterally in the institutions of the International Civil Aviation Organization (ICAO) and bilaterally through the negotiation, supervision, and sometimes denunciation of the Air Services Agreements (ASAs), national governments exerted a 'tight regulatory grip' over all matters of international aviation (Kassim and Stevens 2010:12; Staniland 2003; Meunier 2005; Rhoades 2008; Woll 2008; Delreux 2010). This was usually done in collaboration with air carriers, grouped in the International Air Transport Association (IATA). Operationally, IATA set routes, prices, and non-economic conditions.

After four decades of relative stability the state-centered cartel started crumbling in the 1970s and 80s and gave rise to new negotiated institutions. Commercial aviation across the Atlantic did not develop before World War II ("WWII"). After 1945, technological innovations developed for military use were transposed to civil aircraft, and commercial aviation was expected to be a fast-growth industry also at the international level. Therefore, the Convention on International Civil Aviation, decided in Chicago in 1944 by more than 50 countries, aimed at establishing world air routes, and setting up a regulatory framework for international commercial aviation. The US advocated full liberalisation, with some restrictions on the freedom to pick and discharge traffic at intermediate points. But liberalization was opposed by the United Kingdom ("UK"), Australia, New Zealand, and to a lesser extent the Continental Europeans, all of whom advocated an international order based on absolute national sovereignty and regulation. The UK, in particular, was strongly opposed to liberalisation, because its control of numerous airports across the globe, at which most aircrafts operating international routes still had to land, gave it a formidable bargaining tool in bilateral negotiations with the US and France. The US then proposed separate agreements embodying the different extent of progress on various fronts. One of these agreements established the possibility that nations grant each other reciprocal air rights, referred to as the "Freedoms of the Air" (Rhoades 2008: 43), resulting in bilateral Air Service Agreements (ASAs). ASAs typically contained provisions on traffic rights, capacity, number of carriers to serve routes, and prices. This meant that the US could affect the strategies, and therefore the competitiveness, of those foreign carriers wishing to fly to the US. But the US also made concessions: The Convention defined strict national sovereignty rights over airspace; created the United Nations' International Civil Aviation Organization (ICAO) to supervise agreements; and obliged the US to effectively accept a cartel – which was formed with the creation of the International Air Transport Association (IATA) which stabilised prices and fixed quantities, thereby limiting the scope of efficient US carriers to compete with smaller European ones.

On these legal bases, the bilateral inter-governmental ASAs rapidly proliferated and fixed all "market" conditions. The most influential of them, the Bermuda agreement, signed in 1946 between the US and the UK, defined the "nationality clause" restricting access to two countries to carriers owned by nationals of the two contracting states only. These anti-competitive ASAs mirrored the conditions within most countries. In the UK, for example, the two largest carriers, BOAC and BEA, nationalized in 1946, were allowed to engage in market-sharing agreements. In France, the 1945 wave of nationalizations saw the creation of Air France, which received a monopoly over the management



of the entire French air transport network, and benefited from monopolistic regulation (especially from 1963 to 1986). In Germany, Lufthansa was under state ownership, and air transport was exempt from the normal application of antitrust rules. In the US, where carriers were private, the Civil Aeronautics Board (“CAB”) regulated both entry and prices. Crucially, it was also responsible for the antitrust scrutiny of international agreements and mergers. Hence, restrictive as the ASAs may have been, they were not more so than national rules and regulations.

Over the 1950s and 1960s the equilibrium reached in Chicago seemed stable, as no country had an incentive to unilaterally defect from it. A number of factors eventually led to its destabilisation. First, in 1950 Pan Am, one of two US carriers engaged in international operations, invented the “economy class” and signalled its intention to cut prices. Second, in 1955, Delta Air Lines invented a new airline business model, the hub-and-spoke model (“HSM”). HSM is a system of connections arranged like a chariot wheel, in which all traffic moves along spokes connected to a central hub, increasing traffic between the spoke airports and the hub, increasing in turn the load factor (passenger/seat ratio) of aircrafts. This makes the use of comparatively cheaper large aircraft profitable, and thus spreads flight-specific fixed costs. Given the cost structure of carriers<sup>2</sup>, HSM contributes to economies of scope. In international aviation, the average cost of a multi-product carrier decreases with ‘horizontal growth’, i.e. with the number of origin-destination pairs it serves, precisely the function of the HSM. Thus, the fast spread of the HSM – together with the introduction of the electronic reservation systems - affected the cost structure of carriers, their incentives to consolidate, and hence the preferences of big US carriers in favour of trade liberalization.

Several developments in Europe also created frictions in the cartel. The German carrier Lufthansa was re-created in 1955, thus putting pressure on the existing Dutch carrier KLM (which could not rely on its small domestic market, and had therefore heavily invested in Germany). KLM successfully pressed for improved conditions in the Dutch-American ASA. This made US carriers more conscious of international politics, and Europeans more aware of (a) American politics, and (b) the competition in which they were put by the system of bilateral ASAs. When, in 1958, France asked for the recognition of the principle of reciprocity, as well as the right to fly to the West Coast and then on to the Pacific, the US refused. France accused the US of protectionist policies favouring Pan Am and TWA and led to a temporary French denunciation of the 1946 ASA.

Moreover, the international cartel was subject to two important exogenous shocks. First, the introduction of wide-body jets around 1970 led to big increases in efficiency – but only for those carriers which could invest in the new technology. This not being the case for BOAC, the UK favoured the continuation of the regulated cartel. Combined with the effect of the oil crisis and the enduring crisis regarding rights to fly over the Pacific, this put insurmountable pressure on the original 1946 Bermuda ASA between the US and the UK. The UK asked for (1) tighter controls on capacity; (2) the end of double designation (i.e. the authorization of services by more than one airline per country on a particular route), (3) the curb on Fifth Freedom rights<sup>3</sup> exercised by Pan Am and TWA through Heathrow, and (4) rights to fly to more US cities for British carriers. The new (“Bermuda II”) agreement of 1977 was favourable to these British demands. Coupled with the extraordinary importance of Heathrow in the transatlantic aviation market, it enabled the UK to resist subsequent calls for liberalisation by the US.

Second, from 1978 onwards the US domestic market was fully liberalized. The CAB and its anti-competitive regulatory policies were phased out and the organisation was absorbed by the Department of Transportation in 1985. The end of entry and price regulation initiated a competitive era of industry

---

<sup>2</sup> The bulk of costs of carriers fall under three categories: (a) fixed overhead costs (e.g. general and administrative expenses, advertising); (b) flight-sensitive costs, a function of the number of flights (e.g. fuel); and (c) traffic-sensitive costs, a function of the number of passengers (e.g. food).

<sup>3</sup> The right of a carrier of country X to land in an airport of country Y to fly on to country Z.

growth, coupled with frequent price wars and numerous reorganisation bankruptcy filings. It also meant that the US had to re-negotiate their ASAs to allow for more US firms on each route. But, it was unlikely that the UK or France would allow three or four US carriers to operate commercial flights in exchange of the same rights for the same single state-owned airline.

## 2. Institutional forms

Which institutional forms did the beginning liberalization of the transatlantic aviation take? As the US proceeded to the full-scale domestic liberalisation, the Commission took important liberalising initiatives in Europe. A tacit alliance between the Commission and the European Court of Justice (ECJ) allowed the former to force the hand of national governments into accepting three legislative packages. Taken together, these packages formed the basis of a pro-competitive European aviation policy. Coupled with a series of important liberalising rulings by the ECJ, the commercialisation of public carriers, and the development of an important low-cost industry, they helped create a competitive European market. In transatlantic aviation, however, the role of the EU was very limited. In a 1994 ruling the ECJ held that international agreements on air transportation did not fall under the Community's trade policy competence because they were covered by separate articles in the EU Treaty.

The combination of an increasingly unified market within Europe and the absence of a negotiating mandate for the Commission meant that the US could still attempt to divide and rule the Europeans by proposing individual agreements. Since the British would not negotiate more rights to Heathrow for US carriers, the new US "Open Skies" initiative of the 1990s started from the Netherlands. The US strategy was to gain foot in Amsterdam's Schiphol, from where it threatened to divert international traffic outbound from the UK, France, and of course Germany. Thus, unless these countries signed their own OSA with the US, their carriers would lose business to KLM and to US carriers. Further, in order to lure the Dutch into the plan, the US reminded them that their alliance with Northwest Airlines benefited from an antitrust immunity which was not set in stone.

The American plan worked. A "domino effect" (Meunier 2005) swept across the EU, reaching first small countries. The US signed bilateral OSAs with the Netherlands (1992), and then Belgium, Luxembourg, Denmark, Finland, and Austria (1995). The Commission protested loudly, arguing that a series of small bilateral OSAs would endanger the unity of the European market and prevent the possibility of Europe-internal mergers. It also pointed out that the US were only seeking access to other European towns (mainly through Amsterdam and Brussels), but in return did not offer the right to cabotage between American towns. Nevertheless, in the Transport Council a large majority rejected Commissioner Kinnock's proposal of negotiating a Community OSA with the US, and insisted on maintaining national authority in this field.

Despite its initial failure, the Commission maintained its endeavours and restated its claim to exclusive competency to negotiate OSAs. The DGs unanimously adopted a draft negotiation agreement for the June Council 1995 as a "*positive response to the US effort – which they frankly admit – to divide Europe*" (Agence Europe 26/04/1995). The draft called for a complete mutual opening of both air markets. Kinnock, also threatened that if the Transport Council would reject Community negotiations and the six Member States in question would sign bilateral OSAs, the Commission would initiate legal proceedings against them. Nonetheless, Belgium, Luxembourg, Austria, and Finland signed OSAs in 1995, and Sweden and Denmark initiated negotiations. Austria, Luxembourg and Finland, Belgium, Denmark and Sweden were already the subject of infringement proceedings. The UK, too, signed an agreement with the US to allow for new routes in their respective skies, and, in consequence, received a letter of warning.

Eventually a Community approach gained more ground with some Member States (e.g. Germany, the Netherlands, Italy). The Italian Council Presidency in March 1996 came out in favour of an

“Overall Community Approach” extending to competition rules, state aid, air safety, air traffic management and environmental protection, and suggested a “common EU/US aviation area” going far beyond the goals of the bilateral OSAs. While most Member States requested more clarity on the objectives, the UK vehemently rejected the principle of joint negotiations. At the same time it announced an alliance between British Airways and American Airlines for code-sharing, and a wider cooperation on prices and flight coordination. Since US anti-trust authorities generally made the authorizing of an alliance conditional on the prior agreement of an OSA, the Commission was alarmed. It immediately stated that it had a duty to examine this alliance “*as any other alliance contracted with European airline companies so as to ensure that their provisions are compatible with the rules of competition of the Treaty.*” (Agence Europe 13/06/1996)

In the meantime, the Commission had followed through its threat of initiating infringement proceedings and sent out letters of formal notice to eight Member States (Austria, Belgium, Denmark, Finland, Germany, Luxembourg, Sweden and the UK). With the dangling sword of an ECJ ruling above their heads, the Transport Council in July 1996 yielded and gave the Commission a limited mandate to negotiate a transatlantic agreement in technical issues (but not on traffic rights). In return, the Commission suspended the eight infringement proceedings.

When the Commission in 1997 sought to extend the mandate to the negotiation of traffic rights, transport ministers rejected the Commission proposal. France, Italy, Spain and Portugal were opposed, the Netherlands and the Scandinavian countries in favour, and Germany and the UK not clear. Compounding the situation, four Member States (UK, France, Italy and Spain) simultaneously negotiated bilateral agreements with the US. Given the Council’s renewed refusal to extend the negotiating brief, the Commission resumed the infringement proceedings against the eight Member States that had concluded OSAs. In 1998 in spite of Kinnocks announcement that in the case of a widened brief the infringement proceedings would be suspended - the Transport Council rejected the Commission’s request one more time. While the Scandinavian countries, the Netherlands, Greece, Germany, and Austria sided with the Commission, Ireland led the opposition of the other Member States. Faced with the Council’s renewed rebuff, the Commission moved into the third phase of the infringement proceedings against the 8 countries, Italy was added to the list, the Netherlands and France received letters of warning in 1999.

This line of action was assiduously upheld by the Kinnock’s successor, Loyola de Palacio. Backed by the Association of European Airlines (AEA), she called for a common air traffic space between the EC and the US, and invited Member States to overcome “*disunity, fragmentation and lack of vision*” (Agence Europe 09/12/1999). To no avail, though, for when in 2000 the Transport Council expressed satisfaction over the progress of negotiating technical matters, it also sustained its opposition to the extended mandate.

In the meantime, the legal proceedings ran their course. In spring 2001 the ECJ heard the 8 parties Commission to exclusive competence to conclude an OSA could not be founded on its alleged necessity. But added that Member States could not conclude international agreements in matters covered by common rules, i.e. that airfares and reservations of US air carriers fall within Community *exclusive* competences. He also judged the nationality clause as contrary to rules of the right of establishment, since Member States with OSAs could not grant carriers of other Member States a right of establishment. In 2002 the ECJ followed Tizzano and condemned the 8 countries for violating the Commission’s external competence over air fares on intra-Community routes and computerised reservations systems by concluding OSAs with the US. The Court also ruled that clauses relating to the ownership and control of airlines constitute an infringement of the principle of establishment.

The US government very quickly drew the consequences and called for an amendment of the bilateral OSAs, but stopped short of negotiations with EU15. In view of the Court’s ruling, however, the Transport Council in June 2003 finally yielded to the Commission’s demands and granted it the mandate of extended negotiations.

In the negotiations led for the first time by the Commission, the latter had to face challenging conditions: an ambitious mandate by Member States, i.e. to negotiate for an open aviation area (OAA), at the same time lingering resentment because of the stick of the infringement proceedings so frequently used by the Commission. By involving Member States more closely, but also by re-threatening Member States to follow through with the infringement procedures and seeking the support of Member States in favour of an agreement and the presidency of the Council (Delreux 2010) and, moreover, to introduce the prospect of a continuation of the negotiations in stage two in order to correct the outcome more favourable to the US than the EU (Woll 2010) the Commission was able to gain the support of Member States and come to an agreement with the US.

The outcome of the negotiation of the OSA 2007 first stage was clearly biased in favour of the US: while American carriers enjoy the right of cabotage within Europe, European carriers do not have the same right in the US. Moreover, the Americans were not willing to loosen their ownership and control restrictions for European airlines. These biases in the outcome of the OSA 2007 negotiated by the Commission gave rise to an almost immediate planning of a renegotiation of OSA (stage two) which ended in July 2010 and the outcome of which now needs to obtain the approval of the European Parliament. It includes a complex mutual “trigger mechanism” which – without setting a specific deadline - provides that upon fulfilling certain conditions an extension of rights will be granted. More specifically if the legislation of each party permits majority ownership and control, airlines of the US shall have the right to provide passenger services between points in the EU and five countries without serving a point in the US (7<sup>th</sup> freedom). Or if EU legislation on noise based operating restriction at airports provides that the Commission has the authority to review the process prior to the imposition of such measures and – if not satisfied – can take legal action, airlines of the EU obtain 7<sup>th</sup> freedom rights vis-à-vis the US. Since the US Congress is very unlikely to ever accept the first precondition - mutual reciprocity in access to ownership and control - it is unlikely that American carriers will obtain 7<sup>th</sup> freedom rights anytime soon. It will moreover remain to be seen whether Member States and the European Parliament will accept that the Commission will be given the authority to review night flight prohibitions prior to implementation, the precondition triggering European carriers 7<sup>th</sup> freedom rights vis-à-vis the US.

### **3. Conclusion**

This chapter described the creation of the international cartel institutions of transatlantic aviation in the 1940s, their operation throughout the 1950s and 60s, their increasing vulnerability in the 1970s, and then the progressive liberalization of the whole system, spurred by both US domestic liberalization and the active role of the European Commission in Europe. The story seems to have a natural end, marked by the signing of an Open Skies Agreement between the US and the EU in 2007/2010 providing for a certain expansion of traffic rights and coordination of regulatory measures.

## References

- Delreux, T. and Kerremans, B. (2010) 'How Agents Weaken Their Principals' Incentives To Control: the case of EU negotiators and EU member states in multilateral negotiations', *Journal of European Integration* 32 (4):247-264
- Karagiannis, Y. and A. Héritier (2011), 'Who is Afraid of Whom in Transatlantic Aviation Markets?' in E.Brousseau and J.M.Glachant, eds., *The Creation of Markets*, Cambridge University Press, forthcoming
- Karagiannis, Y. and A. Héritier (2011), 'The New Institutions in Transatlantic Aviation', *Global Policy Journal*, 1, forthcoming
- Kassim, H., and H. Stevens (2010), *Air Transport and the European Union: Europeanisation and its Limits*. London: Palgrave-Macmillan.
- Levi, M. (2004), 'An Analytic Narrative Approach to Puzzles and Problems.' In I. Shapiro, R. Smith, and T. Masoud (Eds.), *Problems and Methods in the Study of Politics*. 201-26. New York: Cambridge University Press.
- Meunier, S. (2005), *Trading Voices: The European Union in International Commercial Negotiation*. Princeton (NJ): Princeton University Press.
- Milgrom, P. and J.Roberts (1982), 'Limit Pricing and Entry Under Incomplete Information.' *Econometrica* 50(2), 443-59.
- Osborne, M. (2004), *An Introduction to Game Theory*. New York: Oxford University Press.
- Pollack, M. (2003), *The Engines of European Integration*. Oxford: Oxford University Press.
- Rhoades, D. (2008), *Evolution of International Aviation: Phoenix Rising*. Aldershot: Ashgate.
- Riker, W. (1957), 'Events and Situations.' *Journal of Philosophy* 54(1), 57-70.
- Schmidt, S. (2000), 'Only an Agenda-Setter? The European Commission's Power over the Council of Ministers'. *European Union Politics* 1(1), 37-61.
- Staniland, M. (2003), *Government Birds: Air Transport and the State in Western Europe*. Lanham (MD): Rowman & Littlefield.
- Tsebelis, G. (1990), *Nested Games: Rational Choice in Comparative Politics*. Berkeley: University of California Press.
- Woll, C. (2008), *Firm Interests: How Governments Shape Business Lobbying in Global Trade*. Ithaca (NY): Cornell University Press.



## **EU Multilateralism: Rhetoric and Reality in the Context of Global Governance**

Christopher Hill<sup>1</sup>, Nadia Klein<sup>2</sup>, Wolfgang Wessels<sup>3</sup>

### **Joint MERCURY contribution to the booklet following the High Level Policy Seminar 'What Should the EU Agenda for Global Governance Be?' 18 and 19 June 2010, EUI, Florence\***

#### **Introduction: The notion of “multilateralism”**

In addressing the challenges of global governance one of the major issues for analysis, assessment and advice is the politically highly promoted notion of EU (effective) multilateralism. But what can be understood by the notion of ‘EU multilateralism’? Is there a particular doctrine of EU multilateralism? And how can EU multilateralism be measured? This joint paper explores these basic questions by drawing on recent work carried out in the framework of the international research project “MERCURY: Multilateralism and the EU in the Contemporary Global Order”.<sup>4</sup> The main argument is that the EU’s general commitment to “stronger multilateral cooperation and good global governance” (Art. 21(h) TEU) needs to be qualified. In particular, as will be shown below, the concept of multilateralism as defined by the EU is highly ambiguous. Moreover, its proclaimed commitment is not absolute but varies considerably across policy fields and vis-à-vis selected partners. Last but not least, we argue that the current political and academic debate on the EU’s multilateral approach suffers from a lack of empirical data, which has to be addressed by innovative methods.

Analysing the EU as an international actor, it is helpful to start by defining the international environment, which provides both incentives and constraints for EU external action. Two different perspectives can be taken as a point of departure for an in-depth analysis: in the first scenario, coherence in the EU’s external action is not such a critical factor, while in the second scenario, based on a concentration of global power, more coherence on the side of the EU would be needed to make its voice heard at all. Thus, on one hand, one might argue that there are different structures of global governance, or varieties of multilateralisms, depending on the respective policy field. This first perspective or scenario would imply that the range of dominant actors and procedures changes according to the political question to be discussed. For example, while Russia plays a central role in the context of non-proliferation negotiations and other security issues, arguably it is much less important for global policy-making when it comes to international trade policy. In this case, we need clearly separated studies on several areas of global governance and the respective activities of the EU. A list of major issues and frameworks would include: global climate regimes, the Group of 20 (G 20), migration movements and trade arrangements. The transfer of lessons from one area to another would be limited or it would need an adapted research design. The political strategies of the EU would be ‘functional’ according to the dynamics of each policy field and the respective instruments available for

---

<sup>1</sup> Sir Patrick Sheehy Professor of International Relations, University of Cambridge.

<sup>2</sup> Research associate at the Jean-Monnet-Chair for Political Science, University of Cologne.

<sup>3</sup> Jean-Monnet-Chair for Political Science, University of Cologne.

\* All three authors are members of the FP7 research project “MERCURY: Multilateralism and the EU in the Contemporary Global Order” (project website: <http://www.mercury-fp7.net/>).

<sup>4</sup> For details on “MERCURY” see the project website: <http://www.mercury-fp7.net>.

the EU actors. The representation of the EU could be more ‘pluralistic’ – which some would call ‘fragmented’, but in this case, this fragmentation would not have such a negative connotation.

On the other hand, we might need to look for dominant patterns of power with limited variations between the respective policy fields. In this second scenario, for example, the United States and China, the so-called “G 2”, might emerge as central veto players in the international system. Or, the Group of 20 might significantly expand its focus, which originally concentrated on the issues of financial stability and economic growth. In terms of power constellations, new coalitions within the G 20 might emerge, namely US-China versus Europe-Russia. As a consequence of such a scenario the EU needs to develop a more forceful political strategy to be in the ‘core group’ or global directorate. More solidarity in its external behaviour would be needed in order to influence the policy-making at the global level.

### **The EU’s ‘doctrine’ of multilateralism**

The idea of multilateralism has become so central to the EU’s external relations in recent years, and so much part of its self-conscious reflection on its place in world politics, that it is not implausible to say that it has become a form of ‘doctrine’, by which is meant a statement of very broad principles which shapes and justifies policy at the strategic level. Historically, American foreign policy doctrines, such as the Monroe Doctrine or the Truman Doctrine, have played an important part in guiding US decision-makers, while also warning outsiders of the vital interests which the country intends to defend at any cost. Since the EU has followed the US example in imitating its National Security Strategy, it may now be on the verge of doing so in the related area of foreign policy doctrines. Yet in the first 25 years of its external behaviour, up to the emergence of the European Security and Defence Policy, the EC/EU relied on the generalized self-image of ‘civilian power’ to provide guidance on the *grandes lignes* of its approach to foreign policy. Unfortunately this was more a convenient rationalization of the status quo than a useful guide to policy.

Researchers in the MERCURY programme, which includes partners from China and South Africa as well as the EU, have been focusing on the problem of European multilateralism as both a phenomenon and a guide to action. Our paper on the issue of multilateralism as a doctrine has produced the following findings.<sup>5</sup>

Multilateralism is a concept which has been given increasing attention by democracies since the end of the Cold War, even if its practice dates back at least to 1815. If it is has now become a ‘doctrine’, or a coherent guide to policy practice, then the European Union is the leader in conceptualising and articulating such a doctrine. Indeed, multilateralism comes closer than any other single concept to expressing what the EU stands for in world politics. The idea is used often to legitimise EU actions, albeit qualified after 9.11 by the term ‘effective’, thus hinting at the European wish to avoid mere idealism, and a new willingness to make the hard choices it has often been criticised for evading. A further sharp difficulty arise over multilateralism as *end* versus multilateralism as *means*: in practice the EU looks on the concept from both perspectives, and codifies it in the form of declarations, recommendations and speeches which, however, usually serve to make it even more difficult to identify a coherent ‘doctrine’. The European Security Strategy (ESS) of 2003, ‘updated’ in 2008, which adopted the idea of ‘effective multilateralism’, did not amount to a parsimonious solution to this problem.

At one level the commitment to multilateralism can be seen as a gesture towards the desirability of international cooperation – who could be against it? – and as a recognition of the banal truth that most things require negotiation, with a wide range of different *interlocuteurs*. But beyond this it is clear that

---

<sup>5</sup> A full version of Elena Lazarou *et al*, The Evolving ‘Doctrine’ of Multilateralism in the 21st Century, MERCURY E-paper No. 3, February 2010, can be found on-line at [www.mercury-fp7.net](http://www.mercury-fp7.net).



we need to differentiate between (1) the internal multilateralism of the European Union; (2) that of the wider European region (ie including the ‘neighbourhood’); (3) and that at the universal, global, level. Even this last level is not as straightforward as it might appear through a UN lens, given that most issues are best addressed through a particular combination of interested states – as over nuclear proliferation. The commitment to the *principle* of multilateralism therefore needs to be made, alongside a recognition that in practice much flexibility is required in mobilizing the relevant group of interested, and effective parties. There are relatively few issues like climate change, which demand the involvement of the whole international community. Inclusiveness is not necessarily a virtue; even if hopes remain that multilateralism has some potentially democracy-inducing effects, these remain hopes and should not act as a bar to dealings with countries who do not live up to European standards. Multilateralism is, after all, *par excellence* a way of coping with diversity.

Both in trade and security the EU’s approach to multilateralism is based on the idea of durability, stability and protracted peace. Arbitration, peaceful dispute resolution and cooperation are central because conflict in all its manifestation is viewed as the root of instability and threats to global society. The promotion of multilateralism is seen as the way not to avoid conflict, but to forestall and manage it so that things never run out of control, as they did so often in recent memory – in 1914, 1929, 1939, 1973, 2001 and 2007. The vision of the world that the EU aims to promote has the realization of durable peace as the ultimate goal, and that in turn requires the management of *difference*.

While trade and collective security constitute relatively long-standing “multilateralised” policies, cooperation in other areas, such as climate change and illegal migration, has yet to be institutionalised or even collectively agreed upon. In this challenging process, a common point of reference, an overarching doctrine of multilateralism, would significantly improve the EU’s capacity to advocate its positions on the type of multilateralism that is most suitable and effective in the confrontation of these threats. For the EU is an ideal mechanism of advocacy by its very nature, as an actor with the ability to export the principles guiding its action. Having attained the highest and most complex level of multilateralism among its members, the EU leads by example.

### **Implementing EU multilateralism: The EU’s selective approach**

Turning to the implementation level, it is interesting to note that the EU’s self-conception of a multilateral actor *par excellence* contrasts with its selective use of uni-, bi- and multilateral strategies. As outlined above, the EU explicitly seeks to promote multilateral approaches as illustrated by both the EU Treaty and the European Security Strategy of 2003. The strengthening of international institutions is pursued as a goal in itself, based on the assumption that the solution of political problems at the international level will be facilitated by the existence of institutionalised cooperation and “rules that apply (more or less) equally to all”<sup>6</sup>. Thus, multilateral cooperation in its various forms is on the EU agenda for global governance. Yet, at the conceptual level, the same European Security Strategy illustrates the tension between efforts to strengthen “effective multilateralism” on the one hand, and efforts to establish privileged bilateral partnerships with a variety of major powers on the other hand. Thus, the document mentions the United States and Russia, but also Japan, China, Canada and India as actual or potential “strategic partners” of the Union. These days, a revised European Security Strategy would probably also mention Brazil – the last country missing to make the list of rising BRIC (Brazil, Russia, India, China) countries complete.

---

<sup>6</sup> See the MERCURY working definition of “multilateralism” in Bouchard, Caroline/ Peterson, John, *Conceptualising Multilateralism. Can We All Just Get Along?*, MERCURY E-paper No. 1, February 2010, available from [www.mercury-fp7.net](http://www.mercury-fp7.net).

Overall, a recent MERCURY investigation into how great powers view multilateralism finds much more continuity than change over time in the diplomatic strategies of the US, China and the EU.<sup>7</sup> Thus, notwithstanding the ambiguity of the term “multilateralism”, the basic finding of this joint research paper is that all three actors seek multilateralism selectively when it suits their interests, depending on the geographic and issue area. Interestingly, in the case of China, the authors identify an emerging “strategic multilateralism” which aims at reforming existing international institutions or supporting and even initiating new multilateral forums such as the Group of 20 meetings or the Shanghai Cooperation Organisation. In sum, despite differences in the interests, capabilities, and political systems of the great powers (if we want to characterise the EU as a ‘great power’), the actual diplomatic strategies of the US, China and the EU tend to converge considerably more than they diverge. Yet, the EU clearly stands out against other international actor in terms of its rhetorical commitment to multilateral policy-making.

These findings raise two questions:

1. How serious is the danger that the EU will undermine its credibility and impact in the context of multilateral negotiations when it resorts at the same time to non-multilateral arrangements, namely a broad range of special relationships with major powers and geographic regions?
2. Given the (perceived) failure of the UN Climate Change summit in Copenhagen in December 2009 and the EU’s low profile role during the negotiations, is the EU actually capable of taking a leading role in multilateral forums – assuming that it is willing to do so in certain policy fields? Which factors – institutional, political, power-related – determine the degree of effectiveness of EU multilateralism?

Arguably, the Union’s leeway to pursue its own agenda for global governance in the future very much depends on its efforts (a) to narrow the current gap between its rhetoric and its actual strategic approach, and (b) to identify and concentrate its strengths to push forward certain topics at the global level. Otherwise, the EU might hardly be perceived as a global actor at all.

### **The unknown factor: Generating data on EU multilateralism**

It has been argued that one can observe a mixture not only of different diplomatic strategies pursued by the EU, but also different degrees of multilateralism, varying across EU policy fields. The remainder of this section will therefore deal with the understudied question of the different levels of multilateralism within EU policy fields. Thus, in order to assess what the EU agenda for global governance might be in the future, it would be helpful to know more in detail about the EU’s actual use of and influence on multilateral rules in the past.

In the context of MERCURY, we found that there is very little empirical data on these issues – beyond compilations of the EU’s – or rather the EU member states’ – ratification of international treaties and conventions. Therefore, we are currently analysing the legal output of the EU in the field of external relations in view of multilateral elements.<sup>8</sup> The idea is to develop and to apply qualitative indicators which allow an assessment of the level of multilateralisation. For example, we check if a given legal act refers to a multilateral legal basis (Indicator I) such as a specific UN resolution. Another indicator scrutinises forms of multilateral implementation (Indicator II) which are foreseen in the legal act itself. An example of the latter would be joint actions or, after the Lisbon Treaty, decisions in the framework of the Common Foreign and Security Policy referring to the so-called ‘Berlin Plus’ agreement between the North-Atlantic Treaty Organisation (NATO) and the EU. This

---

<sup>7</sup> See Klein *et al*, *Diplomatic Strategies of Major Powers: Competing Patterns of International Relations?*, MERCURY E-paper No. 2, February 2010, available from [www.mercury-fp7.net](http://www.mercury-fp7.net).

<sup>8</sup> For a more detailed outline and first results see the DATEX database on MERCURY’s project website (<http://www.mercury-fp7.net>).

agreement guarantees the EU direct access to NATO assets such as planning capabilities when carrying out a military EU operation. Another example of an EU legal act characterised by multilateral implementation would be a legal act containing a pre-defined division of labour between the EU and other international actors such as the United Nations or third states.

Our first findings for the Common Foreign and Security Policy indicate that there is an overall high level of multilateralism especially in terms of a multilateral legal basis. Thus, for the period from 2003 to 2009, more than half of all joint actions for a given year (only exception: 2005) contained references to a multilateral legal basis (Indicator I). Since 2006, as much as two thirds of all basic joint actions contained such references. For roughly half of the basic joint actions, a multilateral implementation (Indicator II) was foreseen. From these findings, the working thesis can be deduced that the EU is relatively stronger in taking into account and thereby strengthening international law than in pooling resources with other international actors. Further analyses for other external policy fields will help to answer the question as to how far the EU as such is more or less inclined to resort to multilateralism across different policy fields.

## **Conclusion and Outlook**

We have argued that multilateralism is central both to the EU's international practices and to its idea of itself. Indeed, other players in world politics recognise this characteristic and often look to the EU to organise multilateralism in other fora, notably the United Nations General Assembly and specialised agencies. At the same time, while the value of multilateralism has been deeply internalised by EU decision-makers, it is not always reflected in its practices. These are inconsistent and selective, if not actually hypocritical. This is for four reasons: Firstly, the EU has not fully worked out its own philosophy of multilateralism, and to the extent that it subscribes to a 'doctrine' this has not yet been translated into a clear set of guides for action – and perhaps it never could be. Secondly, insofar as the EU is itself a coherent actor in international relations it is guided, like all others, by a mix of self-interest and wider concerns, of short and long-term thinking. It is thus never going to subscribe consistently to 'milieu' values and instruments at the expense of a more parochial set of concerns. Thirdly, the EU cannot control the activities of its own member states, so that even if a consistent support for a multilateralist approach were to be achieved by the Brussels institutions, national foreign policies might well defect or subvert the common line. Finally, the Europeans' commitment to, and interpretation of, multilateralism varies a good deal across issue-areas. The most obvious differences are between forms of conduct in the areas of trade and defence, but there is much unpredictability elsewhere, in part due to the fact that even where there is a strong aspiration to achieve a widespread agreement – as over climate change – the ability to implement it is often lacking, partly through internal handicaps and partly through the EU's inability to carry other major powers along with it.

There is clearly much useful research to be carried out in the many varied issue-areas in which the EU is active internationally. MERCURY will be active in attempting to push the research agenda forward during the second half of its programme in 2011-12.



## The EU and Global Governance

Harold James\*

The process of European integration has in itself been an inspiration to other parts of the world to engage in deeper forms of political and economic cooperation: European processes are regarded as a model that might be a basis for closer regional cooperation, notably in Latin America, in the Gulf, and in Asia. This has especially true in the area of monetary cooperation. The most important contribution the EU can play in enhanced global governance is to ensure that its credibility is not dented, and that the European model remains attractive.

Currently, in the aftermath of the worst financial crisis since the Great Depression, the world is suffering from currency chaos and the threat of currency wars. Europe since the 1960s has produced an answer to such conflicts – first in the form of the 1979 European Monetary System, and a synthetic unit of account (ECU = European Currency Unit) that might serve as a model for newly popular ideas of introducing a world unit of account in some reformed version of the IMF's Special Drawing Rights (SDR); and later in the form of a currency union that some idealists might wish to hold out as a model for a single world money. But, as actually implemented, both versions of the European currency dream have been quite problematic; and in order to serve as a convincing model for global currency governance not only rigorous rethinking but also urgent reform is required.

Crises are a chance to learn. For the past two hundred years, with the exception of the Great Depression, major financial crises originated in poor and unstable countries, which then needed major policy adjustments. Today's crisis has started in rich industrial countries: with U.S. subprime mortgages, but also with European mismanagement of banks and also of public debt. What are the Europeans going to learn, and do they have anything to teach the world?

The financial crisis, which has shown up flaws that are particular to the European construction, as well as generally shared fiscal weaknesses in the major industrial countries: Japan and the United States are as vulnerable as Europe, but the source of their vulnerability is different and needs to be tackled in a different way. The source of the European problems is clearly connected with inadequate governance. In particular some issues, though they were intensely discussed in the late 1980s and early 1990s in the lead-up to the Maastricht Treaty, were never adequately resolved:

1. The debt and deficit criteria were not backed up by effective enforcement mechanisms. In debates of the late 1980s and early 1990s in and about the work of the Delors Committee, about how government finances should be controlled, one side emphasized that the market would exercise a control. In the event, markets have allowed excessive levels of cheaply financed debt to build up, with a sudden and unpredictable move to revulsion, after which debt financing becomes very expensive or completely impossible. This cycle from cheap finance to crisis has happened recurrently in the circumstances of emerging market economies, but it also occurred in the lead-up to the EMS crises of 1992-1993.

An alternative mechanism to the market for controlling the consequences of fiscal diversity lies in external controls: that was indeed the sense of the original Stability Pact (and later the Stability and

---

\* Harold James is Professor of History and International Affairs at Princeton University, and Director of the Program in Contemporary European Politics and Society. He was until August 2010 also Marie Curie Professor at the EUI, and a regular contributor to Project Syndicate. His most recent book is *The Creation and Destruction of Value* (Harvard University Press, 2009); other books include *Europe Reborn* (2001) and *International Monetary Cooperation Since Bretton Woods* (1996). He is currently working on a history of European monetary integration commissioned by the BIS and the ECB.

Growth Pact). But such controls were from the beginning subject to criticism that they did not really adequately reflect the dynamics of debt sustainability, which vary from case to case. Poor countries are highly debt intolerant and are prone to frequent reversals; while large and prosperous countries are usually able to persuade markets to absorb large quantities of government debt. As a consequence, especially for big countries with well-developed capital markets, the generalized limit of deficits to 3 percent of GDP or debt to 60 percent looked unnecessarily restrictive. The most powerful countries in the EU, France and Germany, thought they could be ignored with impunity. And the then President of the European Commission, Roman Prodi, deemed the rules absurd. By the early 2000s, and with the encouragement of the Commission, countries habitually misrepresented their position in the economic cycle in order to justify continued high levels of deficit financing. The result was a proliferation of deficits in the boom phase of the business cycle, which seemed to raise no alarm bells as markets were quite eager to finance any European government borrowing.

2. There was no mechanism in the European governance structure for dealing with sudden or unexpected economic shocks. This was a desideratum that should have emerged at the latest from the 1997 Asia crisis, as countries such as Thailand or Korea did not appear to have major fiscal or debt problems before being hit by speculative attacks, but had suddenly very large debt burdens as a consequence of having to absorb the cost of the rescue of banks and corporations. But Europeans clearly did not feel that Asia had any relevant lessons for them. At least now, after a devastating European crisis, they should know better and should think about what mechanisms, European and global, can be used in dealing with the aftermath of shocks.

Some of the problems of individual European economies today are the result of long-term deteriorations of the fiscal position, but in two countries that are central in the unfolding European fiscal and monetary crisis, Ireland and Spain, the pre-crisis debt levels were low and the budgetary position clearly sustainable. The shock that hit these countries meant that the government had to take on the responsibility for dealing with widespread private sector failure. But these governments were crippled by the consequences of such a responsibility, and a mechanism for allocating and distributing the costs more widely is now required.

3. Although the Single European Act had led to the creation of a large and integrated financial and capital market, and although the ECB Statute provided for a potential role of the ECB in banking supervision and regulation, in the event there was no such Europe-wide mechanism. In the 1989 Delors report, paragraph 32 stated that the “system would participate in the co-ordination of banking supervision policies of the supervisory authorities.” The word “national” that had qualified “supervisory authorities” in earlier drafts was deleted, leaving the implication that the supervisory authorities would be European. The ECB Statute (Article 25) states that: “The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Community legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.” But this is not a satisfactory basis for systematic bank supervision and regulation.

In the meantime, since the conclusion of the Maastricht Treaty and the legal framework for European monetary regulation, the world financial system has changed. Megabanks raise many broad and interrelated issues in the management of the global economy. They entail management problems over a huge geographic area and among very disparate, complicated businesses. They have not only been beset by pure fraud, they also seem at times to have lost control of even legal transactions, many of whose valuations can no longer rely on easily acquired market quotations. Conflicts of interest can easily arise between dealmakers and management, with no ready mechanism for adjudication. Hundreds of separate (and in some cases incompatible) software systems are required to manage these diverse activities, with the result that it is impossible for senior management to track the precise extent of risk exposure. Working across many national borders with integrated affiliates has intensified potential cultural conflicts. As financial institutions lose much of their own national character, regulators have had a difficult time defining the span of their authority. Not only is much of

international business conducted in self-regulated offshore (Euro) markets, many institutions conduct all or most of their activities outside the jurisdictions in which they are incorporated. Along these lines, the very size of these institutions raises questions about how effective a counterweight regulators can be. Many institutions control complex assets and transactions that dwarf the size of the national economies in which they are ostensibly based, posing system risk. They are, therefore, deemed by many too big to fail, adding additional moral hazard to a system already fraught with hazards.

The most obvious initial lesson of the current financial crisis is that banks need a strong government to bear the potential costs of a rescue. Where very large banks exist in small territories with small-scale governments, the banks are vulnerable. Appropriate control is, however, both an economic and political issue. Big countries have the economic clout, but this does not necessarily give them the political will to act. The United States is big enough to handle behemoths such as Bank of America or Citigroup. China can handle its large banks, even if they have very large portfolios of poor credits. European banks are in a more precarious situation. Small countries that evolved into major financial centers are especially vulnerable. Ireland, as well as Iceland, have become notorious cases of a financial sector that metastasized so as to destroy the fiscal capacity of the host country. But even in the big and strong European countries, France and Germany, large banks and internationally active banks potentially exceed the government's capacity to mount a rescue. In addition, there is the complexity of disentangling which country is responsible for what part of a rescue, when for instance central European banks are controlled by an Austrian bank that is bought by a German bank that is then bought by an Italian bank. The national character of bailouts, because fiscal solutions are inevitably done by governments with the capacity to raise tax revenue, has become the Achilles heel of European integration, and of the European approach to governance.

The high fiscal costs of bank bailouts are obviously not a uniquely European risk. But they go beyond being simply a challenge to fiscal stability and sustainability, because they redirect the focus of political action. Politically, the easiest way out of an impossible situation often lies in blaming the foreign commitments of financial institutions. There is a strong danger that the crisis will bring a resurgence of financial nationalism in Europe, in which individual countries will try to reconstruct their own banking sectors in line with nationally designed rules.

But there are other dangers, notably that a reform of banking regulation and supervision will lead to deleterious effects for the rest of the economy. Politicians inevitably worry about big institutions, and about their potential instability. One obvious answer is to try to make them smaller, perhaps by legal limits, or more effectively and justly by the escalation of capital adequacy requirements. In the case of the banks that required state rescues, European competition rules are requiring divestment and downsizing. Institutions such as RBS, which for a time in 2009 headed the list of the world's largest international banks, are being pruned down by the interventions of the European Union's Directorate General for Competition. Even the stronger European banks are being pressed to improve their capital ratios. This means in most cases that they will continue to cut back on lending. Such measures worsen the impact of the financial crisis on the rest of the economy. By contrast, in the United States, the government pushed big banks into buying up smaller and vulnerable banks, and is now doing everything it can to push banks to lend more.

Even in the aftermath of the Lehmann crisis in 2008 and a global financial and trading crisis, Europe did little to remedy these defects. It is only the 2010 fiscal crisis that has led to a widespread discussion of these issues. The crisis creates the need for urgent action. The resolution of these problems is a European necessity; but there is also the possibility that an innovative solution might act as an example for the rest of the world in how to approach the complex issue of cross-border financial activity and the risk that it poses to the world economy and to world order.

The design of interventions to cope with the aftermath of financial crises is especially difficult. Indeed the international community has been debating precisely this issue for at least the past thirty years without producing an adequate outcome. The particular problem has been that up to now rescue

packages look ad hoc, flimsy and vulnerable. They are open to criticism that they do not cover all eventualities. Such weaknesses are apparent in many of the European plans produced as a response to the problems of 2010. The possibility of worse scenarios that are not covered by the rescue plan acts as an invitation to powerful speculators to take on the official community. In consequence, a more comprehensive series of measures would be needed to ward off the threat of markets attack. Such measures would include:

1. More effective supervision or surveillance of national policy making and of national budgets. A more prominent and more independent role for Eurostat is a hopeful beginning. But there needs to be a stronger element of political control to surveillance, and it is unclear as to whether a fundamentally multilateral or interstate organization such as the European Council can really apply discipline that is perceived as fair and not distorted by the priorities of the most powerful member countries.

2. A fair system requires a strong basis in rules. The more fiscal discipline that is left to discretion, the more partial and political the system as a whole will appear, and consequently the more vulnerable to political attack. The European crisis has already led to highly nationalized and nationalistic interpretations of its origins and its remedies, with creditors blaming the insufficient discipline of debtors, and debtors lambasting the self-centered moralism of the creditors. A properly elaborated series of fiscal rules that do not leave the disciplining process simply to the market (which until 2010 failed to exercise any discipline).

3. A mechanism is required for dealing in an orderly way with sovereign bankruptcy, and for including bond-holders and creditors in post-crisis burden-sharing. Debt overhangs represent a crippling burden on the capacity of economies to recover in the aftermath of severe financial crisis. A solution to this issue that does not repeatedly threaten new waves of financial instability would be a major EU contribution to a long-standing global governance debate that well predates the current crisis. Such proposals were widely discussed in the 1990s and early 2000s, and IMF Deputy Managing Director Anne Krueger pushed a Sovereign Debt Restructuring Mechanism that would have offered a legal path to imposing general haircuts on creditors and to ending the collective action problems that had impeded the efficient solution of sovereign bankruptcy in the past. If Europe could show how such a bankruptcy and debt restructuring process might operate – in the worst possible scenario – markets would be reassured, as uncertainty would be reduced. There would also be a viable international model of how to tackle severe sovereign debt problems.

The problems of excessive sovereign borrowing followed by a sudden revulsion are quite familiar from the past thirty years' history of the international financial system. In Latin America in 1982, large borrowers threatened a default that would have brought down most major banks in the industrial countries. In the run up to the current crisis, major European banks – especially in the UK, Germany and France – have built up a gigantic exposure to what they erroneously thought of as safe government debt. Europe looks as if it is now suffering from a pathology that was previously regarded as the domain of developing country debt. A substantial immediate haircut on the sovereign debt of the vulnerable Eurozone countries would be so destructive that it would set off a new round of bank panics, and thus for practical reasons looks impossible. But servicing debt at high interest rates looks like a domestic political impossibility. The realization of this problem means that banks can hold their host governments to ransom. That is why the crisis has become a challenge for the UK, Germany and France.

The Franc-German initiative at Deauville requiring some possible measure of debt reduction on debt issued after 2013 tried to avoid the immediate shock of a haircut, and it represents a step in the right direction. But the preannouncement of possible write-downs led to a major wave of uncertainty about banks, and consequently does not solve the confidence problem. A long-term alternative requires some capacity to write down debt where it has reached excessive levels. But also at the same time it is necessary to establish a central guarantee of some part of the outstanding debt to remove the worry about a complete write-down.



4. A collective European debt instrument is required to cover some part (but not all) of the existing debt of member governments. This would be a way of distributing risk more widely, so that the big banks cannot apply the sort of blackmail outlined above.

5. A genuinely European approach to banking supervision and regulation, which would imply some added fiscal capacity to resolve severe problems. There is an analogy with the European past: in the 1950s and 1960s, the most politically problematic sector was agriculture, and the EEC devised a mechanism for agricultural support. In the late 1970s and 1980s, the major problem was managing the decline of heavy industrial sectors such as steel, and again transfer payments were needed. In the current situation, the problem is stabilizing and making good the ravages that have affected the financial sector, and again, this is not a task that can easily be accomplished in a national setting.

At a moment when many global collaborative exercises are spluttering, when first the G-7 and then the G-20 have been discredited, an effective European resolution of these outstanding issues would generate a new confidence that Europe does offer a superior model for global governance that may be emulated in order to build stability in rapidly growing parts of the world.

Reform discussions also raise profound questions about political legitimacy. The way that Europe tackles this issue will be critical for the improvement of its own governance, and for Europe's ability to offer a global model. Europeans have too long relied on top down solutions that assume that a neatly designed fix can overcome all obstacles: but such fixes are neither financially big enough to deal with the possibility of extreme events, or politically embracing enough to ward off the possibility of challenges and backlashes. The idea that there is some currency design that can work as a *deus ex machina* is ultimately an illusion. Pursuing it will risk both market retaliation and populist backlashes. Any institutional fix is ultimately too flimsy to deal with the consequences of bad or divergent national policies. In order to achieve a greater degree of real convergence, some deep debate and consensus formation with a real democratic legitimacy is required.



## Why the “Second Superpower” Needs a New Discourse

Andrew Moravcsik\*

The decisive constraint on Europe’s agenda for “global governance” is not that Europeans lack wealth and power, nor that they are inactive in the world, nor that they lack attractive policies to propose. The decisive constraint is that no one takes Europe seriously. Americans, Asians, and even Europeans themselves greatly underestimate Europe’s current global power and activity. It is the Old Continent. Headlines have already handed the 21<sup>st</sup> century to the US, China, and India.

This has no basis in reality. Whether judged by its power or by its actions, Europe is the world’s “second superpower.” It will retain this status for a generation or more, whether or not Brussels centralizes foreign policy. Yet Europe’s leaders are complicit in the undervaluation of European power. They wax Europessimistic, denigrate Europe’s global achievements, and see more centralized authority as a precondition for real global power. Perceptions shape reality. Europeans neither get full credit for, nor reap full advantage from, what they already do.

Nothing could most cost-effectively improve Europe’s global standing now than to change the way Europe presents itself to the world. To get the most out of its power resources, and to optimize its global governance strategy, Europe desperately needs a new discourse.

The essence of a new discourse might be this: Europe is the world’s “second superpower.” It is likely to remain so for a generation or two. Europe is preeminently a civilian power. Civilian power is the most important power resource of the 21<sup>st</sup> century. High *per capita* is the key to global power, civilian and military. Europe can be powerful even when it is decentralized. Europe is dedicated to healthy diversity among its members. Europe is primarily interested in bargaining hard for its own gain, rather than preaching to others. European values are those of economic equality. If leaders in Washington, Beijing and, yes, Brussels were convinced of the points above, imagine how much more positively it would be viewed, at home and abroad. Nothing could improve Europe’s standing in the world more rapidly than to align European discourse with its real achievements in this way.

### 1. Present Europe as the “Second Superpower.”

Europe is more globally influential than China, India or Russia in almost all respects, and as or more influential than the US in many—and it will remain so for one or more generations.

**Military:** If troops are needed and the US is unavailable, Europe is the world’s major provider. 21% of the world’s military spending is European—less than America’s 43%, but considerably more than China’s 5%, Russia’s 3%, or India’s 2%. Europeans do not just equip forces; they use them: 50,000 to 100,000 troops in combat abroad for most of the past decade. 21 of 24 allies in Afghanistan, and until recently 1/3 of casualties there, are European. Military interventions and peacekeeping operations, if not US-led, tend to European-led, as in Sierra Leone or Lebanon.

**Trade and Regulation:** Europe is the world’s #1 trading bloc: the largest trading partner of every Middle East country, most in Africa, many in Latin America, trading more with China than the US. Its external accounts, despite the Euro’s strength, are closer to balance than the US. Its regulations have global reach: Just ask Microsoft. A majority of global R&D, FDI, and intra-firm trade remains

---

\* Professor of Politics and International Affairs, and Director of the European Union Program at Princeton University’s Woodrow Wilson School.

transatlantic. It is a leader in the green technologies of the future. Only EU internal regulation—not external foreign policy action—can balance Russian energy threats.

**Accession:** EU membership, the power of attraction, remains the single most cost-effective instrument to promote peace and prosperity any country has wielded since the Cold War's end, helping to stabilize 10-15 countries.

**Diplomacy:** Europe-led diplomacy and neighborhood policies in places as varied as Ukraine, Morocco, Georgia, Libya, and China can show concrete results greater than those achieved by any other country or bloc.

**Multilateralism and International Law:** Almost every major international legal initiative and international organization over the past generation has been backed primarily by Europe. Europeans were criticized for the failure of Copenhagen, but it is due to them that global warming, like other human security issues, is on the global agenda.

**Social, Educational and Individual Exchange:** Europe is among the most globally networked regions. For example, it takes 4 times more university students from third countries (outside EU-27) than does the US.

**Foreign Aid:** Europe provides 60-70% of the world's foreign aid. European development assistance and nation-building efforts are considered to be more effective and extensive than those of the US.

**Values/"Normative"/"Soft" Power:** Polls show that across the globe, distinctively European democratic political values—parliamentary government, social democracy, international human rights norms, limits on money in government, civilian power—are more popular than distinctively American alternatives.

These are extraordinary and enduring assets for influencing global politics, equal to those of the US (at least), and far superior to the hand dealt China or India for a generation or more. Europe should not be ashamed to say so.

## **2. Stress civilian power as the most important asset of 21<sup>st</sup> century diplomacy.**

Europe is a powerful military power. Yet the European security strategy of 2003 was correct to point out two things. First, Europe's most cost-effective instruments, its comparative advantage, lies in civilian power. Second, the most important problems of the 21<sup>st</sup> century—globalization, nation-building, environmental politics, social unrest, development—will be resolved primarily using civilian power, not military power. War is becoming vanishingly rare in the international system. Where it remains, usually in conjunction with civil war, civilian power remains an adjunct to any solution. The US government is struggling to develop "comprehensive power" that Europe already possesses.

Yet the discourse of Europe's leaders about global power is still dominated by two views, both of which undermine Europe's prestige abroad. One is that Europe is weak because it lacks sufficient military power. A surprising number of Europeans accept this 19<sup>th</sup> or mid-20<sup>th</sup> century *Realpolitik* view that global power still comes out of the barrel of the gun: Europe cannot be a world power until it has a large, unified army. This misleads Europeans into diverting resources, financial and political, to military purposes. Worse, it leads foreigners to underestimate both Europe's considerable military assets and its more important civilian power instruments. It is time to renounce this view in public. The second view is that Europe should go to the opposite extreme and promote only the "normative power" of Europe's multilateral example—the softest of soft power. This view is even more damaging to Europe's prestige. It portrays Europeans as utopian idealists, when in fact countries (including EU members) accept multilateral solutions for pragmatic domestic policy reasons, not out of idealism.

Europe’s most powerful civilian power resources are in the middle, resting on the economic and institutional power of trade, aid, and international agreements of which it is a member.

### **3. In speaking of economic power, emphasize *per capita*, not aggregate, measures.**

The view that Europe is declining economically vis-à-vis rising powers is exaggerated. (Even the direst prognoses project Europe’s share of global GDP declining from 23 percent to 17 percent of the global total over the next generation—hardly catastrophic—even if the assumption of linear growth in the developing world is accurate.) The main reason why such calculations mislead is that aggregate GDP is an inappropriate measure of power. One often reads alarming statistics about the sheer size of the Chinese or Indian population or economy. But for poorer countries, a large population can be as much a burden as a benefit. Today the primary imperative for most governments—not least those in Beijing, New Delhi, Brasília, and other major emerging country capitals—is to maintain legitimacy by providing adequate economic growth, social mobility, and public services. Interstate war of any kind, let alone total war decided by the total commitment of population and thus aggregate GDP or demographics, has become exceedingly rare among great powers. High spending on foreign affairs is, for all governments except those of high per capita income countries, a luxury good. Thus the projection of influence abroad, particularly in complex and subtle civilian forms, is something high per capita income states do much more effectively. (Measuring national income for foreign policy purposes in nominal terms, not PPP terms, would be more accurate as well—since power projection is a capital-intensive export good.)

### **4. Stress that Europe can be powerful, whether or not it is centralized.**

EU external policy is often judged by whether policy is centralized and coordinated. In many areas—enlargement, trade, competition, UN policy—European policy is centralized. But elsewhere Europe can be effective without being centralized. Does it matter, as long as a positive result is obtained? Does it matter whether Europe’s 100,000 troops engaged abroad are on EU, NATO, UN or unilateral missions? Does it matter that five member states abstained from EU policy on Kosovo recognition, if the pragmatic compromise moved policy forward on the ground and got assistance flowing? Aren’t the achievements of individual states in foreign affairs, individual Olympic medals, Europe educating 4x more university foreign students, are just as much triumphs for “Europe” as are formal EU policies? The EU should express indifference about how such goals is achieved. “Coalitions of the willing” are fine, if they work. Until foreigners understand that Europe can be strong even when it is decentralized—often because it is decentralized—Europe’s prestige will be artificially low.

### **5. Promote an EU ideal of diversity.**

In support of decentralized policy, EU and national leaders should portray the EU as the defender of member state diversity. The EU provides for the security and identity of nation-states, helps protect them and advancing their interest vis-à-vis globalization, defends diverse European social welfare systems, and extends shared *and individual* European national values. Just as portraying recent institutional reforms as a “European constitution” backfired, so aspiring for a centralized EU foreign policy often makes the European project seem at once threatening and quixotic to its citizens. Just as it proved much more effective (and more accurate) to portray treaty reform as a system of cooperation among the diverse peoples of Europe, so the EU should adopt an anti-centralizing rhetoric. Europe’s aim, in foreign policy, is to let the Danes be Danes, the Irish be Irish, and the French have as many kinds of cheese as they like—but to permit them to cooperate when they can and will. In practice this is what Europe does, after all. This would render the European model more legitimate at home, and far more attractive in Asia—where it is closer to the ASEAN mode of cooperation than most observers believe.

## **6. Bargain hard to promote European interests, focusing on outcomes rather than process.**

Outcome trumps process. Ask Chinese diplomats or policy analysts about Europe and many respond: “Europeans talk too much.” Europeans are perceived as preferring long discussions, often without knowing what they want. In Washington the same impression prevails. Perhaps Europeans believe their model and interests will prevail via its intrinsic “normative power.” If so, this rests on a misreading of European integration, which was largely an interest-driven process, and it is certainly not a recipe for respect in Washington or Beijing.

Europe needs to deal with the world on the firm basis of its interests. One does not need to be North Korea to grasp the dismal truth of international politics that “squeaky wheels get the grease”: attention is lavished on countries that bargain hard for specific concrete aims. This is how Europe behaves in trade policy, and it receives all the respect it is due. Effective EU human rights policies, those linked to enlargement and trade conditionality, function this way as well—as opposed to ineffective, purely rhetorical policies in the UN or with regard to Tibet. Yet Europeans often miss opportunities. The aftermath of the second Iraq War of 2003 was not an experience to be repeated, but it was a period in which Europe’s power was respected, even overestimated. Jeremy Shapiro and Nick Witney recently criticized Europe and the EU for providing support in Afghanistan but not seeking to influence allied policy there, and called on Europeans to assert a distinctive European view in the world more forcefully. Europe should seek opportunities to advance distinctive European demands.

## **7. In promoting values, focus more on economic rights.**

Europe’s distinctive heritage of the social welfare state, combined with its commitment to development assistance, might be an ideological asset. Rather than focusing entirely on human rights understood as political rights, Europe would do well to focus on economic well-being, understood as the realization of economic equality, economic security, labor rights and adequate leisure, as distinctively European values. If history or current events (strikes in China) are any guide, these will be the major issues of the next half century in much of the developing world. Europe would do well to get on the right side of history, while distinguishing itself from the US.

## Towards Responsible Interdependence

Kalypso Nicolaïdis\*

*Summary: The EU needs to adopt a clear goal for XXIst century global governance: that of sustaining a world of responsible interdependence. How to get there? Through the nurturing of a global political ethics.*

### ***1. Strategic outlook: For countries and peoples around the world to sign up to an agenda of responsible interdependence, we need to redefine together the rules which determine “who adjusts.”***

What we can say is this: On the horizon 2030, the world will not only have several centres but its centre of gravity will have shifted – to Asia and the global south, to new public and private actors, to transnational institutions.

But we cannot tell how this 2030 multipolar world will accommodate new patterns of globalisation, residual US military unipolarity, traditional balance of power dynamics, a range of ad-hoc bilateral alliances, regional groupings, power fragmentation, and competition over scarce resources, as well as probably broad areas of chaos. There are too many unknowns. In their scenario planning for 2025, the authors of a recent NIC-EUISS study provide an impressive list of factors that may make global fragmentation and conflict more likely (ISS, 2010). If global governance – the collective management of common problems at the international level- is at a critical juncture, many of the current trends do not point in a rosy direction.

Managing Europe’s relative decline is thus about global resilience: given these massive uncertainties, what will it take for Europe to remain a relevant pole and help accommodate the revisionist urge of rising states to change the rules of the game devised under the previous balance of power? What will it take to define and negotiate the terms of a truly sustainable global governance pact for the more crowded world of the future?

Much has been said and written in the last few years including by the participants in this project. The EU’s global policy—as both Brussels and that of its member states- seems to have lost its compass: the nurturing of interdependence, a state of affairs that has served us relatively well on our continent. Instead, as stressed by Richard Youngs in a recent alarm-raising book on European decline, European governments are engaging with renewed fervor in standard balancing behavior, and the false *Realpolitik* certainties of spheres of influence and alliance building - ‘the EU has developed a storyline on ‘rising powers’ but not on the ‘broader changes needed to multilateralism’.

Some advocate a new “global grand bargain” involving the engineering of “nothing less than a new international system” (Hutchings & Kempe, 2008; Jolyon Howorth, 2010). It is clear why revisionist powers on the rise would want this. They too demand for more effective global governance in the face of increasingly complex and interconnected risks (EUISS, 2010). The EU should want it too, less the bargain is eventually shaped while leaving it standing in the corridor. But what of the content of such a new grand bargain?

Here let me only suggest some building blocks:

---

\* Kalypso Nicolaïdis is University Lecturer in International Relations at Oxford University, and a Fellow at St Antony's College.

1. A new grand bargain is indeed in-the-making: more representation, status and resource transfer for the South (of course in a differentiated way) in exchange for a greater share of responsibility in dealing with global problems – the new G20 is the incipient reflection of this bargain in terms of governance but will falter on implementation challenges.
2. Europeans must use their declining power to shape this bargain in their interest.
3. They should strive for a world in which *interdependence* is nurtured rather than a world of growing zones of chaos or new hierarchies, isolated poles, jealously guarded sovereignty, unilateral action galore and rival states or regions. In short, they need to help sustain the “inter” in an inter-polar world (Grevi, 2009).
4. They should strive not only to be responsible powers themselves (or the EU *per se*) but also recognise and support others’ attempt to define what “responsible” means for themselves.
5. The above boils down to a simple goal: to help make the idea of *responsible interdependence* as widely shared as possible among nations.

*Responsibility.* This agenda starts therefore with the need to re-examine what we mean by responsibility. The idea that status (or “respect”) in the international system must be earned and that the price in turn is “responsibility” is not new and goes back to Thucydides. Responsibility is both a trans-temporal concept (responsibility for future generations, the future of the planet) and spatial (responsibility for the weakest, poorest). In either cases, it is about the provision of some sort of public good by an actor or a group of actors, grounded on a conception of the identity of that actor and of its relationship with others. Responsibility applies to the two sides of the coin - “responsible sovereignty” in terms of unilateral action at home and abroad, and “shared responsibility for the global commons” in terms of collective or possibly multilateral action.

“Responsibility” is a widely shared injunction these days. At the heart of our understanding of post-war US hegemony is that it combines power resources, purpose and responsibility. Obama’s inauguration speech was peppered with the claim of the US as a responsible power. Canada feels especially proprietary having long defined its role in the world in terms of global citizenship. China has developed the idea of being a responsible power in the last decade, oscillating between the phrases of “responsible power” and “responsible development”. Its core motivation is to appear non-threatening, and reassure the international community so as to be able to pursue its export-led growth unhindered as well as avoid perceived US encirclement. More recently, Americans have called on China to become a “responsible stakeholder” in the context of global climate change. As with India and Brazil however, anchoring their own sovereignty is seen as a prerequisite to taking on global responsibilities that might threaten it.

And of course, R2P, adopted 5 years ago by the UN, repackages the right of intervention with the idea of responsibility, is predicated on the understanding of sovereignty-as-responsibility, as opposed to strict territorial sovereignty: international responsibility as first and foremost that of helping individual states fulfil their own internal responsibility to their population. Only after having tried this first ‘enabler’ route do states have the responsibility to protect *directly*.

This widespread use of the term should not hide the difficult questions associated with “responsible interdependence:

- Who intervenes: to what extent does “responsibility” constitute a license to act without permission from “non responsible” actors? to what extent does the label itself reflect a given hierarchy in the international system, and is such hierarchy always compatible with other principles proclaimed (equality between states, multilateralism, sovereignty)? Or, can different degrees of responsibility justify new patterns of hegemony?
- Who shapes the rules: who defines what “responsibility” means and the mechanisms by which the protection of some by some does not end up hurting others more? If enabling local actors is a pre-



condition, who decides how and when? Who defines what “fairness” means and the mechanisms by which the protection of some does not end up hurting others more?

### ***Who adjusts?***

Or: “who should be made to adjust.” This question was the core object of debate between Keynes and White at Bretton Woods and sixty five years later between China and the US at Copenhagen. In the end, most actors assess big principles on consequentialist grounds. Non-western powers will certainly not want new rules to cater to western pathologies alone. This is their message in the G20 attempt to reform the international financial system. To be legitimate, a new grand global bargain must rest on renegotiating the contours of global justice as understood by different actors around the world, including the implications of solidarity beyond borders and the responsibilities it carries. Given the fact that many of the emerging power will remain relatively poor countries in the next couple of decades (per capita), their assessment of the implications of responsibility will certainly continue to be grounded on global distributive grounds. How these translate into domestic distributive grounds may or may not be part of the equation. Global rules affect the distribution of adaptation costs to the various changes that we face by setting expectations as to which categories of actors ought to bear the cost of adjustment. Examples of “who adjusts” confrontations include:

- creditors vs debtors: Current events already show that we need to revisit the Bretton Woods contract which has been forcing the burden of adjustment on deficit countries for the last 60 years and transfer some of this burden of adjustment to surplus countries.
- Producer vs consumers of carbon emissions: part of what is at stake in revisiting the global climate deal is the unfairness of only accounting for our responsibility for carbon emission as producers – where we do well by exporting production, as opposed to consumers – where our record of adjustment has been dismal.
- External vs domestic actors: Whether in economic or security field, we will need to constrain more systematically allowance for pushing the costs of adjustment on outsiders.
- Nuclear vs non-nuclear states: the NPT was supposed to be a balanced bargain between the 5 nuclear states and the rest. But up to now, most of the focus and the responsibility therefore for the stability of the system has been on the non-nuclear (actual or nominal). Nuclear states will need to radically act on their responsibility towards both the provision of regional security and denuclearization.
- Immigration vs emigration countries: the global regime for the movement of people will certainly be revisited in the next decade. Emigration countries will continue to be asked to shoulder more of the burden to keep people from leaving while immigration countries will be asked to shoulder more of the burden associated with brain drain. Underlying this question we may ask whether individuals or collectivities will come to share the cost of plugging the skills holes of countries of destination.

A new global grand bargain towards responsible interdependence will not be struck in one blow. It will need not only to reflect power shifts but also mitigate power at the same time through institutions. Western hegemony will not give up control easily. And even for some of the more enlightened leaders, the question arises as to whether the west which still controls the international system should progressively accommodate or anticipate power transitions - should the new grand bargain to be shaped incrementally or as a package? Should reformers anticipate and sequence reforms or conduct them in parallel and balance concessions between them (the old WTO question)? How will these various “who adjusts” question be addressed and linked?

## **2. Strategic choices: We must recognize the limits of indirect legitimacy, promoting the EU as a model or relying on networks of experts**

The argument above is made on substantive grounds. Ultimately, global rules will be seen as legitimate because of the results they deliver. Nevertheless, we still need to ask, how these rules are shaped and by who will affect who they empower and as a result, the legitimacy of global governance reform. What are the alternative sources for such legitimacy?

The most obvious one, which defines *indirect legitimacy*, is through domestic politics, accountability and publicity. Accordingly, the relationship goes both ways: global governance enhances national democracy and domestic politics enhances the legitimacy of global action (Keohane, Macedo and Moravcsik, 2009). Thanks to the soft constraint provided by global governance norm, domestic capture can be decreased if not eradicated, forcing national politicians to lean more towards the protection of median interests rather than particularistic ones; global governance also supports domestic watchdogs through the provision of information which in turn allows for more effective blame and shame strategies; and more generally global oversight can sometimes curb the tyranny of the majority and empower minorities whose interests have been overlooked. But there are of course limits to this reasoning. Indirect legitimacy is plagued by agency costs and information costs which greatly curtail these various mechanisms; it lends itself to the kind of blame shifting games that may decrease rather than enhance the accountability of politicians; and in the end, whatever the analysis that we, political scientists, may produce about its merits, it fails to capture the collective imagination of citizens and civil society actors who do not trust politicians to hold a monopoly over legitimate transnational deal-making. In whose name, they ask. And if it is in ours, we may have different things to say than when we elect national leaders in national contexts. Global governance needs to be reformed to supplement if not replace indirect legitimacy.

But while we cannot rely solely on indirect legitimacy from the domestic level, we must also eschew two illusions, the illusion from above (constitutionalism), inspired by the EU model, and the illusion from below (the world of expertise).

Europeans, are quick to suggest their own cherished alternative to indirect legitimacy only, that of *the-EU-as-a-model*. Indeed, why not consider the EU way of doing things as a model for global governance, in its way of adding elements of supranationalism to indirect legitimacy, both on the managerial front (empowering super-secretariats-turned-executives like the Commission) and reasons of conflict of law and legal coherence (as with the 50 year jurisprudence of the ECJ on direct effect and supremacy- see Maduro, ed, 2009).

I have argued elsewhere that suspicions of neo-colonialism and accusation of euro-centrism may be enough to dismiss the idea in its crudest form. But the EU can nevertheless serve as a toolbox for global governance (Nicolaidis and Howse, 2002) in the sense of tools that can be borrowed by others, adapted to their needs and discarded if need be. Better still, the tool-box should be a collective one and the EU may recognize that it may be able to borrow some tools from others too, including some developed globally (this is already happening with global standardization for instance). In fact, it is a rather idealised version of the EU which informs its projection more than its reality. The EU's version of supranationality needs to be shown for what it is: direct effect is context specific; the pooling of sovereignty does not have to involve significant loss of control; and most regulatory transfers are horizontal; power may be mitigated in the EU but is a mitigation of power bounded by the attachment to consensus and compromise; and informal rules of governance are pervasive when it comes to the way states vote, the role of supranational commission, or mechanisms for participation.

Some would even take the EU a notch further and actually try to constitutionalise some principles of global governance. But applying direct effect and supremacy not only constitutes a degree of supranationality that not only would be rightly rejected in most corner of the world whether democratic or not, but dangerously eschews the logic of politics, at all levels. In trade for instance, it would transform what is essentially a logic of diffuse reciprocity and bargaining between trading

partners (eg US-EU or North-South) into a set of principles governing trade (eg the Singapore agenda) devised by the EU and inevitably perceived as favouring its interests. In such a world, formal adjudication where legitimacy is based transnational rule of law, reigns supreme. This is what Robert Howse and I have called *the illusion from above* in global governance reform. On the other hand, it is not enough to simply replace such a logic with the idea that somehow, insider network ‘governance’ (eg bodies of experts) could replace political fora and make the necessary trade-offs between say free movement and the environment that may reflect first order conflict of values between polities. This is *the illusion from below*.

This does not mean however that global governance cannot do with these various logics. In the world as it is and will continue to be, *three spheres of global governance* with their different logics and different sources of legitimacy, will continue to coexist:

1. democratized governance where legitimacy is based on “international politics”, more or less backed up by the domestic politics of democracy;
2. legal governance, where legitimacy is based on “the rule of law”; and
3. insiders’ networks, where legitimacy is based on technical expertise.

Not only will the balancing between these three sources evolve over time, but the legitimacy acquired on one ground will affect the others in complex and unpredictable ways. Nevertheless, I will close by arguing that the legitimacy of global governance and the goal stated at the outset would stand a better chance if throughout all three spheres of decision making (political fora, courts and expert bodies) those involved were to commit to a global political ethics fit for the XXIst century - a global ethics which the EU may inspire, test and promote but for which it cannot and must not claim to be a model.

### **3. *Shaping a global political ethics***

The case for politics and a political ethics rests on three core tenets:

1. The need to mitigate asymmetries of power while reflecting power constraints requires all three spheres of governance (politics, law and expertise) to work in synergy.
2. The need for continuously engaging in political balancing exercise in the face of first order conflicts of values which require more than expertise or law, but cannot be left solely to the potential arbitrary nature of global politics. We must contend with the necessarily *contested* and *contestable* nature of the issues at stake and necessarily *controversial* and *unpredictable* nature of the solutions on offer.
3. The need for democratic politics appropriate to global governance, that is neither majoritarian nor solely representative, nor, even less, a deliberative free for all.

We need less emphasis on global institutional reform and greater attention paid to the ethos which guides the actions of all actors including through new forms of participatory democracy at the transnational level.

One way to think about such a political ethics is to hope for more *democrats* if not democracy beyond the state. Legitimacy is not grounded in people’s beliefs in the abstract, nor on permanent referenda and ‘global opinion poll’ but in the degree to which a set of power relations can be *justified in terms of* people’s beliefs, values and expectations. The heart of the matter is in the behaviour of the relevant actors and in the beliefs, values and expectations that inspire them—as well as ultimately, in the congruence with other levels of governance as well as individual citizens. As a result our focus must shift from the play’s stage and set to the performances of the actors and their *ethos* or political culture. This involves a series of connected shifts of emphasis: from institutions to outcomes; from structure to behavior; from substantive to process constraints on states; from specific rules to general norms; and perhaps from architectural to biological metaphors.

Another entry point is to grapple with the unavoidable need to think beyond *majoritarianism* at the global level, while eschewing pure unanimity logics. What are the functional equivalent to such a middle grounds? What kinds of norms and practices encourage persons who disagree with or lose from particular outcomes nevertheless to view the outcomes in question as legitimate and consistent with the political ideal of self-legislation or non-subordination (the question of legitimate coercion)? And what kinds of norms and practices are most likely to sustain the commitment of those who decide to implementing them and enforcing them even while they may come to benefit others (non nationals) more (the question of sustainable governance)?

The answer, I suggest, is to develop a political ethics for the XXI century. A global normative “code of conduct” can be developed iteratively and inclusively including through the numerous decisions “in its spirit” taken in the different for a discussed below. While the field must remain fluid and open, some building blocks can be suggested (see Howse and Nicolaidis, 2009):

- Inclusiveness is the most straightforward and widely advocated remedy to the woes of global governance, whether we may be speaking of participation or representation. In fact, even absent classic inclusiveness, it may refer to a desirable propensity or obligation to at least partly internalise the interests of others in one’s decision and positions. In doing so, the tradeoffs involved in various global decisions must be made more transparent and explicit including in considerations over who adjusts discussed above. Clearly, this criterion is not to be confused with a participatory free for all, the kind of frame conjured by EU reps to resist progress in this direction (see Richard Young, 2010).
- Compromise is said to be a very EU-norm. But it is unclear that the spirit of compromise is so prevalent in EU politics these days. Compromise has a high cost. It may mean that compensating the (temporary or permanent) internal losers and facilitating internal adjustment become the concern and responsibility of all, trumping traditional sovereignty concerns and “black box negotiations”. More radically, compromise rhymes with a commitment to compromise-over-time and according to circumstances, that is a commitment to review, revise and if necessary reverse decisions which turn ought to affect parties very differently to what may have been envisaged initially.
- Control is the modern equivalent of the liberal concern with curbing arbitrary power, encompassing altogether, checks and balance; deference (to politics on the part of the judicial; to states & local actors; between international regimes horizontally); accountability (eg through impact assessments by parliaments-civil society); and the rights associated with contestation.
- Mutual recognition is a core norm for curtailing centralizing tendencies in an interdependent world. Heralded as a quintessential EU norm it is alas highly contested here too. It allows transcending a purely territorial logic by letting people or firms move to other jurisdiction while applying their own rule, under a set of conditions. In this sense it is an horizontal rather than vertical transfer of powers whereby global governance can be seen as politicized conflict of law. Under its aegis, states and polities must negotiate over where they need to converge, and where freedom to act is necessary for diversifying risk and enabling trial and error innovation.
- Empowerment has been invoked in vain incessantly in the last few years, especially in the development field; but a GPE cannot do without its proper implementation. It complements mutual recognition as a means to navigate the false alternative between global governance and sovereignty. Under this spirit power and competences allocation is not a zero sum game: power is exercised globally to enhance it locally. It generally implies that the global collective ought to design process rather than substantive constraints on the domestic arena which is no less interventionist. But who is to decide who is to be empowered?
- Universality ultimately refers to the degree of common (or universal) acceptance of the rules adopted and promoted, at least among actors that can be considered part of international society. Universality implies symmetry: that global decisions and laws, especially those that are meant to

apply directly within the local polity are shared and fine-tuned within a multilateral institution, or as a second best, that parties have some reciprocal influence on each other.

## **Conclusion**

A political ethics appropriate to the goal of responsible interdependence can guide the EU's contribution to adapting global governance to today's needs. Its ideal is the pursuit of broadly shared principles of justice in particular in the way we define and redefine who adjusts in the . Such an approach would ultimately be tested on its capacity to legitimize global governance constraints on domestic politics and socio-economic choices as well as on how each polity deals with 'the other' within, and on its capacity to speak to the fears of both current and future generations.

Such an agenda would have concrete implications for the EU as a global actor. On the burning issue of *EU representation* for instance, inclusiveness and symmetry call for scaling back over-representation in multi-lateral bodies but does not vindicate the "one voice" mantra. Indeed, it ought to be possible to adopt differentiated responses for various fora, regarding who sits at (or behind) the table, who speaks, who votes and how. Invoking compromise and reversibility ought to make rotating representation more palatable. Moves on scaling down EU representation would then be more likely to be perceived as a part of a broader GPE agenda. More broadly, a GPE is also a guide to operationalizing decision-making in global governance settings, whether under the banner of bargaining power, negotiating skills or mediation credibility. Bargaining power is best used by recognizing tradeoffs, crafting compensations as well as mechanisms for reversibility. Moreover, these norms require a diverse body of diplomats and other actors serving EU interests at the global level who can bring different sensitivities to the task. And finally, the EU may become a more credible mediating power if it starts engaging with the difficult choices that need to be made on the global ethics over who adjusts as determined by the new and emerging global governance blueprint.

## **References:**

- Giovanni Grevi, 'The inter-polar world: a new scenario', EUISS *Occasional Paper* No 79 June 2009.
- Robert Howse and Kalypso Nicolaidis, 2009, "Towards a Global Trade Ethics" in Eagleton-Pierce, Jones, Nicolaidis (eds), *Building Blocks Towards a Global Trade Ethics*, Oxford GTE Programme, WP Series, July 2009 At: [http://cis.politics.ox.ac.uk/research/Projects/Global\\_Trade\\_Ethics\\_BB.pdf](http://cis.politics.ox.ac.uk/research/Projects/Global_Trade_Ethics_BB.pdf)
- Robert Howse and Kalypso Nicolaidis, 2008 'Democracy without Sovereignty: The Global Vocation of Political Ethics', in Tomer Brode and Yuval Shany (eds.) *The Shifting Allocation of Authority in International Law: Considering Sovereignty, Supremacy and Subsidiarity* (Oxford: Hart Publishing) At: <http://www.sant.ox.ac.uk/people/knicolaidis/chapter7.pdf>
- EUISS, *Global Governance 2025: At a Critical Juncture*, Paris: 2010
- Keohane, R., Macedo S., Moravcsik A., 2009, 'Democracy-Enhancing, Multilateralism', *International Organization*, vol. 63, no. 1, pp. 1-31
- Kalypso Nicolaidis and Robert Howse, 2002, "'This is my Utopia...': Narrative as Power," *Journal Of Common Market Studies*, Special Anniversary issue, Vol 40, Number 4, pp 767-92
- Kalypso Nicolaidis, "Sustainable Integration: Towards EU 2.0?" *The JCMS Annual Review Lecture, Journal of Common Market Studies*, 2010 Volume 48 Annual Review pp. 21–54
- Kalypso Nicolaidis, "EU 2.0: Towards Sustainable integration", 12 July 2010, *OpenDemocracy*.
- Richard Youngs, *Europe's Decline and Fall: The struggle against global irrelevance*, Profile Books, 2010



## **The European Laboratory for Multilevel Governance of Interdependent Public Goods: EU Leadership for Global Public Goods?**

Ernst-Ulrich Petersmann\*

### **Lessons from the ‘European Laboratory’ for Regulating ‘Public Goods’ (PG)?**

During the first year after the entry into force of the Lisbon Treaty in December 2009, the 27 EU member states agreed on a vast range of additional fiscal, monetary and financial disciplines, procedures (e.g. for supervision of national budgets) and new institutions (like the Financial Stability Facility, the European Systemic Risk Board and three separate EU agencies to monitor securities, banks and insurance companies) aimed at preventing a continuation of the international financial crisis. The fact that the EU succeeds more quickly and more comprehensively than any other regional or worldwide organization in using crises as opportunities for improving multilevel governance raises the broader question: Does the European laboratory for multilevel governance offer more general policy lessons for the biggest policy challenge of the 21st century, i.e. to protect international PG more effectively? Following the ever more comprehensive liberalization and regulation of the EU’s internal market, will the increasing focus on multilevel governance of the EU’s external relations likewise succeed in establishing new paradigms for international relations? Does Article 21 TEU – according to which the ‘Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world’ – require the EU to promote its ‘multilevel constitutional approach’ also in the collective supply of global PGs?

This contribution makes five propositions: First, the prevailing conceptions outside Europe of ‘legal nationalism’ and ‘international law among sovereign states’ fail to protect international PGs effectively; due to the overlapping nature of interdependent, national and international PGs (like rule of law, an efficient trade and financial system, protection of the environment), they also risk undermining the reasonable self-interests of citizens and states. Second, these governance failures are largely due to the inadequate regulation of the five major ‘collective action problems’ in the multilevel governance of global PGs. Third, the ‘collective action problems’ differ among policy areas and require sector-specific, multilevel regulation avoiding the utopia of unitary ‘global governance’; for instance, citizen-driven markets and environmental pollution require multilevel regulation and judicial protection of rights and responsibilities not only of states, but also of citizens. Fourth, the prevailing conceptions of ‘international law among sovereign states’, ‘global administrative law’ (GAL), multilevel economic regulation, international private law (‘conflicts law’) and of national legal systems must be integrated into a more coherent, multilevel governance based on common constitutional ‘principles of justice’ (e.g. as defined by human rights and national constitutions), stronger international institutions (as ‘guardians of PGs’) and multilevel constitutional restraints of multilevel governance protecting legitimately diverse constitutional rights of citizens. Fifth, the inevitable ‘legal fragmentation’ and insecurity among national and functionally limited, transnational legal regimes must be mitigated by multilevel legal and judicial cooperation in protecting transnational rule of law and cosmopolitan rights of citizens, as required also by the human rights obligations of all 192 UN member states and the customary law requirement of interpreting international treaties, and settling international disputes, ‘in conformity with principles of justice’ and the human rights

---

\* Professor of international and European law and former head of the Law Department of the European University Institute at Florence. Former legal advisor in the German Ministry of Economic Affairs, GATT and the WTO and former German representative in numerous UN and European institutions.

obligations of governments. The diverse forms of European integration law offer diverse models for reforming international law also beyond Europe.

European multilevel governance approaches are usually not accepted as *models* by non-European states focusing on ‘state sovereignty’ and ‘state interests’ rather than on ‘community interests’. Yet, the ‘European lab’ for multilevel protection of ‘unity in diversity’ offers a unique *toolbox* for improving multilevel governance in the supply of interdependent PGs. For instance, the ever closer cooperation among national and European courts continues to promote cosmopolitan and constitutional conceptions of international law not only among the 30 member states of the European Economic Area (EEA) and the 47 member states of the European Convention on Human Rights (ECHR) by interpreting the ‘rules of recognition’ of European law in conformity with the human rights of the European citizens; the European experiences also influence the increasing cooperation among domestic and international courts outside Europe. Just as all democracies have adopted national constitutions which legitimately differ depending on their diverse democratic preferences, historical experiences and respective resources, so do regional agreements outside Europe and worldwide agreements on collective protection of international PGs legitimately differ depending on the respective regulatory problems and ‘public reason’ in diverse jurisdictions. By demonstrating common self-interests in international PGs, identifying regulatory failures and proposing legal restraints of vested interests in obstructing and distorting multilevel regulation of PGs, independent ‘guardians of PGs’ - like the EU Commission and international courts - must exercise leadership for multilevel protection of interdependent PGs and justify international regulation in terms of individual and democratic self-interests and ‘common, but differentiated responsibilities’ for problem-solving.

### **The ‘Overlapping Nature’ of PG**

Economists define PGs (like legal security) by their non-excludable and non-rivalrous use benefiting all citizens. International PGs are not only composed of corresponding national PGs; they also often overlap among each other. For instance, the PG of an efficient world trading system overlaps with the regulation of other PGs like international food security, energy security, protection of the environment and transnational rule of law. Prevention of climate change, for example, requires international rules on border tax adjustments (e.g. for preventing ‘carbon leakage’), for ‘green subsidies’, transnational rule of law (e.g. governing industry-driven systems for trading of ‘carbon-reduction commitments’) and peaceful settlement of disputes, which inevitably overlap with the legal and dispute settlement system of the World Trade Organization (WTO). Legal protection of international PGs can enable countries to protect national PGs more effectively, for instance by preventing harmful externalities (like international pollution) and enabling reciprocal liberalization of welfare-reducing border discrimination against foreign goods, services, capital and foreigners. As conflicts of interests (e.g. about distribution of costs) entail that comprehensive regimes (like the WTO) for multilevel governance of specific PGs will remain exceptions, less comprehensive alternative regimes (e.g. for climate change prevention) must build on, and promote synergies among, complementary and mutually coherent rules and institutions with diverse memberships.

### **Governance Failures in Protecting Interrelated PGs Undermine the Reasonable Self-Interests of Citizens and States**

Empirical evidence suggests that governments increasingly fail to protect international PG. Examples include the failure to prevent the financial crises since 2008 as well as climate change, and to protect transnational rule of law for the benefit of citizens as well as ‘human security’ of the 2 billion people without adequate access to potable water, food, essential medicines, rule of law and protection of human rights. These international governance failures undermine also national PGs, as illustrated by transboundary environmental pollution and other harmful ‘externalities’, including welfare-reducing trade discrimination and distortion of domestic competition by abuses of anti-dumping rules. The



prevailing ‘Westphalian conceptions’ of ‘international law among states’ fail to regulate the ‘collective action problems’ and impede the collective supply of PGs at national and international levels. Examples include the lack of US trade legislation enabling conclusion of the WTO Development Round negotiations, the lack of US environmental legislation enabling US leadership for preventing climate change, and the inadequate cooperation among international and domestic courts in protecting transnational rule of law for the benefit of citizens. Historical experience suggests that ‘liberal constitutional pluralism’ has proven to be the only effective strategy for protecting PGs at national and international levels in conformity with the human rights of citizens and other ‘principles of justice’. This factual claim is supported not only by the fact that all democracies have evolved into ‘constitutional democracies’ in order to better protect their agreed ‘principles of justice’ through legislation, administration, adjudication and ‘public reason’ supported by citizens. The interpretation by the European Court of Justice (ECJ) of EU law as a multilevel constitutional system protecting the human rights of 500 million EU citizens, the EFTA Court’s interpretation of EEA law as a multilevel legal system *sui generis* protecting constitutional rights in all 30 EEA member states, and the interpretation by the European Court of Human Rights (ECtHR) of the ECHR as a much more deferential, multilevel constitutional system protecting human rights in 47 member states offer diverse ‘European examples’ for the political feasibility of multilevel constitutional protection of international PGs. Multilevel constitutionalism is no longer a utopia, but has transformed international relations across Europe by protecting a common market, multilevel judicial protection of rule of law and human rights, as well as a historically unique European period of ‘democratic peace’ and social welfare.

### **‘Collective Action Problems’ in Multilevel Governance of Overlapping PGs**

If the creation of a liberal trading, financial and development system in the 1940s was due to the postwar US leadership for elaborating the UN Charter, the 1944 Bretton Woods Agreements, GATT 1947 and the 1948 Universal Declaration of Human Rights: What does the failure of US leadership for further trade liberalization in the WTO’s Doha Development Round negotiations and for prevention of climate change, like the failure of EU leadership for WTO competition and environmental rules, tell us about prospects for extending legal protection of national PGs to international relations? This paper argues that ‘constructive internationalism’ requires more adequate regulation of the ‘collective action problems’ in multilevel governance of interdependent PGs. The effective supply of international PGs in the framework of the diverse forms of European integration law empirically refutes claims that the anarchical structures of international relations make collective supply of international PGs legally and politically impossible. European integration rather confirms that collective supply of international PGs depends on rules, institutions and governance mechanisms going beyond those of the Westphalian system of ‘international law among sovereign states’ so as to limit the five main ‘collective action problems’ impeding multilevel governance of interdependent PGs:

- The *jurisdictional gap*, i.e. the incapacity of every state to provide global public goods without international cooperation, requires delegation of additional governance powers to international organizations as international ‘guardians of PG’. The example of ‘internet governance’ illustrates that – even if multilevel governance of a global PG (like the internet) may be essentially based on national law (like US corporate and administrative law governing the ICANN) – no state can unilaterally protect global PGs without international cooperation and transnational rule of law (e.g. arbitration on internet domain names administered and enforced by the World Intellectual Property Organization).
- The *governance gap*, i.e. the inability of most intergovernmental organizations to protect, regulate and govern collective supply of international PGs effectively, requires new forms of multilevel rule-making, administration and judicial protection of rule of law and constitutional rights. The one-sided focus of the ‘Westphalian conception’ of ‘international law among sovereign states’ on national and international law as categorically diverse legal systems, as well as on foreign policy discretion and power politics of governments, risks undermining transnational rule of law and

cosmopolitan conceptions of International Economic Law (IEL) focusing on consumer welfare and human rights rather than ‘state interests’ (as defined by national rulers and powerful interest groups). Human rights and democratic governance require that rules must be justifiable – at all levels of multilevel governance – in terms of satisfying the reasonable interests of all affected citizens and governments.

- The *incentive gap*, i.e. the inherent temptation of free-riding in collective supply of international PGs, requires common, but differentiated responsibilities not only among states but also for civil society and business. Examples include financial incentives for poor countries that provide transnational environmental services by protecting tropical forests that are of global importance for bio-diversity and carbon-reduction. Consensus-based WTO negotiations lack adequate financial and other incentives for less-developed WTO members (e.g. in terms of capacity-building, trade facilitation) to participate in, and support, new WTO rules limiting market failures (e.g. by means of WTO competition and environmental rules) and protecting global PGs (e.g. in terms of promoting international food and energy security). Multilevel regulation of citizen-driven market competition should provide for stronger participation rights and legal remedies of private actors, for instance by empowering citizens to enforce international trade, competition and investment rules in domestic courts as decentralized incentives for ‘internalizing harmful externalities’.
- The *participation gap*, i.e. the need for inclusive consensus-building and worldwide participation, requires leadership, incentives and financial assistance for 'capacity building' by ‘coalitions of the willing’ so that all relevant public and private actors cooperate in the collective supply of global public goods. Citizen-driven economic and environmental systems cannot function legitimately and effectively without rights of all affected citizens to participate in multilevel decision-making and have recourse to legal and judicial remedies against unjustified restrictions of individual rights and market distortions. If consensus practices impede worldwide regulatory reforms, ‘competing liberalization and regulation’ among ‘coalitions of the willing’ need to be promoted, as in the case of the WTO rules permitting free trade areas, customs unions and trade preferences among less-developed countries.
- The *rule-of-law-gap* results from the inevitable *legal fragmentation* among hundreds of national, international and transnational legal regimes interacting in the supply of global public goods. Legal predictability, transnational rule of law and legal protection of legitimately diverse conceptions of justice, human rights and ‘constitutional pluralism’ are essential for the collective supply of global public goods. Transnational rule of law must be promoted by recognizing, 'balancing' and reconciling competing rights and constitutional claims on the basis of common constitutional principles, like the human rights obligations of all 192 UN member states; the legitimate diversity of national constitutional traditions and democratic preferences must be respected. As inter-state rules may lack democratic legitimacy and may unduly restrict individual rights, transnational ‘rule of law’ – as a constitutional, jurisdictional and judicial restraint protecting equal individual rights against abuses of ‘rule by law’ - may require and justify departures from ‘rule of international law’.

### **Regulation of ‘Collective Action Problems’ Requires a ‘Paradigm Change’ in Multilevel Governance of Interdependent PGs**

Most governments emphasize the need for ‘member-driven governance’ in worldwide organizations pursuant to the ‘Westphalian paradigm’ of ‘international law among sovereign states’. Also IEL continues to be analyzed (e.g. in most textbooks and in the jurisprudence of WTO dispute settlement bodies) as a part of public international law regulating the international economy. Even though this prevailing paradigm will continue to be important for promoting state interests, it risks undermining the protection of human rights and other interrelated PGs, especially if newly emerging powers (like China) continue emulating ‘US exceptionalism’ and power politics (e.g. by abusing anti-dumping

rules as a political ‘selective safeguard clause’ for redistributing domestic income in favor of powerful lobbies). In regional economic agreements (like NAFTA and the EEA) and bilateral investment agreements (BITs), IEL is increasingly perceived as ‘multilevel regulation of the economy’ protecting no longer only rights and obligations of governments, but also of citizens, companies and other non-governmental organizations (e.g. investor rights and investor-state arbitration pursuant to Chapter 11 of NAFTA). Yet, the effectiveness of this ‘multilevel economic regulation approach’ often depends on ‘hegemonic pressures’ (e.g. by the USA in NAFTA) and is lacking in many regional free trade areas among less-developed countries.

The diverse ‘multilevel constitutional conceptions of IEL’ applied by governments and courts in the EC, EU, the EEA as well as in the ECHR reflect the constitutional insight that the legitimacy and effectiveness of both intergovernmental as well as multilevel economic regulation need to be enhanced by multilevel parliamentary law-making and judicial protection of constitutional rights of citizens and transnational rule of law. Even though most governments outside Europe remain unwilling to follow the diverse ‘European models’, all 192 UN member states have accepted human rights obligations and multilevel constitutional commitments under national constitutions, UN law and the WTO legal and compulsory dispute settlement system. The increasing cooperation among international, regional and domestic courts and investor-state arbitral tribunals – notably in human rights, trade and investment law – continues to prompt courts to clarify the common ‘constitutional principles’ underlying human rights, constitutional law and the law of international organizations (like limited delegation of powers, due process of law). For instance, ever more courts acknowledge the customary law requirement (as codified in the Preamble and Article 31 of the 1969 Convention on the Law of Treaties) of interpreting international treaties, and settling international disputes, ‘in conformity with principles of justice’ and the human rights obligations of governments. As respect for human dignity requires respecting the diverse value preferences of individuals and of democratic communities, human rights law requires respecting ‘reasonable disagreement’ among individuals and states on how civil, political, economic, social and cultural rights and other constitutional values should be mutually reconciled in view of the limited resources. The ‘balancing’ of competing rights and legal values in interpreting IEL, by ever more national and international courts, confirms that the customary rules of treaty interpretation offer sufficient flexibility for interpreting IEL in conformity with legitimately diverse conceptions of human rights and of ‘principles of justice’.

Arguably, multilevel governance of interrelated PGs requires integrating the diverse international, transnational, constitutional, administrative and private law conceptions of IEL in order to promote overall legal coherence of multilevel rule-making, administration and adjudication. Just as the national constitutional and legal systems of the 192 UN member states will continue to legitimately differ from each other, so will the law of international organizations for the collective governance of interdependent PGs continue to differ depending on the specific regulatory challenges, ‘collective action problems’ and value preferences of the states and citizens involved.

### **What Should the EU Agenda for Global Governance Be?**

The increasingly cosmopolitan, multilevel governance of interrelated PG among the 27 EU member states has been more successful than the state-centered ‘Westphalian governance’ in all other international organizations. The progressive extension of EU law to ever more European states has made the EU’s accession policy one of the most successful ‘transformation policies’ in international relations. Yet, in worldwide organizations like the UN, the IMF and the WTO, the EU’s leadership role remains limited by limited competences (e.g. preventing EU membership in the UN and IMF), vested state interests (e.g. in over-representation of EU member states in the IMF Board of Governors, agricultural protectionism preventing WTO reforms) and self-interests of the EU bureaucracies (e.g. in preventing legal and judicial accountability in European courts for the frequent violations of WTO law even if such disregard for the ‘rule of law’ was formally established in WTO dispute settlement rulings and the ‘reasonable period’ for implementing WTO obligations has long expired).

The failure to conclude the Doha Development Round negotiations since 2001, the financial crises since 2008, international tensions caused by unnecessary food and poverty crises in less-developed countries, climate change and other environmental crises illustrate systemic failures in the international rules, institutions and governance for global PG. Effective regulation of many of these PGs depends on international rule of law and 'interface rules' and institutions promoting mutual coherence of fragmented, but 'overlapping' regulatory systems. The effectiveness and democratic legitimacy of many of these rules depend on citizen-driven, market-based and rights-based incentives enlisting civil society and business in support of PG and preventing competitive distortions and selfish abuses of power, such as incentives for private investments in renewable energies, decentralized carbon-emission trading systems, private involvement in 'clean development mechanisms', and for reducing emissions caused by deforestation in developing countries.

The Lisbon Treaty reflects and requires a 'cosmopolitan constitutional approach' to foreign policies challenging power-oriented conceptions of nationalist 'hegemonic foreign policies'. Instead of perceiving this European constitutional law as a strait-jacket limiting the EU like a 'giant Switzerland' with limited 'hard power', the EU should promote its unique model of 'unity in diversity' based on multilevel constitutional protection of European public goods as a 'norm-setter' promoting 'best practices' for overlapping PGs. The EU, EEA and the ECHR offer diverse models for limiting national governance failures by means of independent 'guardians of PGs' vis-à-vis one-sidedly 'nationalist foreign policies'. Due to its 'citizen-oriented, constitutional mandate', the EU Commission has reason to present itself and the European 'rule of law system' as 'international role models' for the collective supply of PG. As long as the USA, Russia, China and other 'emerging powers' cling to 'legal nationalism' and hegemonic conceptions of foreign policies, the EU must exercise leadership by example as mandated by the Lisbon Treaty's commitments to international rule of law and protection of human rights and sustainable development: In all policy initiatives for European public goods, the EU should act also as a guardian of global PGs. For instance, rather than claiming special rights of the EU in UN bodies, the EU should act as a 'role model' justifying adaptations of UN law to regional economic unions like the EU. EU leadership for concluding the Doha Development Round, for international financial and environmental regulation, international rule of law, etc should focus on 'soft power' and promotion of transnational rule of law, even if this is resisted by some EU diplomats and governments.

## EU Governance in the Light of New Regulations Introduced by the Lisbon Treaty

Dusan Sidjanski\*

The concept of governance covers many fields in comparison with the concept of government. In particular, it is a multilevel government-society relationship involving the participation of many unofficial actors at different levels. If we consider that European governance includes not only official actors such as governments and public administrations, but also economic, social groups and enterprises, scientific and cultural actors and even citizens, then we have to admit that the Commission assisted by the European Economic and Social Committee and the Committee of the Regions is the unique European institution in direct relation with these social actors. In my view, European governance is conceived as a comprehensive concept encompassing all current or potential actors, movements and social streams at the European level which involves national and regional as well as local levels in the European Union. In a more comprehensive paper, I intend to examine the changes introduced by the Lisbon Treaty, the different levels of governance and the intervention of different actors, as well as the impact of the new communication system. In this note, I propose to concentrate on the key problem which will be decisive for the future of European governance: the relations between the two Presidents and the role of the High Representative (H.R.) and the key role of the Commission as the only institution promoting the community method and the initiator of community law and policies. In the establishment of a balance between the intergovernmental and community methods, the H.R. has the chance to play an important role.

### Tension between intergovernmental method and community method

Some officials and authors maintain that this is a false argument raising a false debate. On the contrary, I believe that this is a fundamental issue regarding the *European project* and its future. The *intergovernmental method* corresponds to the classical model of international organisations which is based on different institutions or organs made up of governmental actors and their representatives, and an *international common secretariat*. It is essentially composed of official actors and represents an imbalance of power dominated by the weight of governments. In comparison, the *community method* is a new creative method invented by Jean Monnet and first applied by the European Coal and Steel Community based on the balance between intergovernmental institutions and new independent institutions such as the Commission, the European Parliament and the Court of Justice. The key active role is attributed to the European Commission which has a monopoly on proposals for community rules and is the guardian of the treaties on the application of the Lisbon Treaty. It is the Commission which generates the community process.

Composed of full-time members, the Commission as an active power, independent of governments and interest groups, is responsible for formulating and articulating the *European general interest* based on a supranational vision, as well as for promoting common policies and guidelines for action in a community perspective. As an independent institution, its authority is founded on the procedure of its designation by the European Council and its final approval by the European Parliament. But this authority is acquired through its competences, its efficiency and its power, which enables the Commission to counterbalance national interests strongly represented by the Councils. As a result of all these assets, the Commission is the main guarantor of the interests of all Member States and of global cohesion within the Union.

---

\* Dusan Sidjanski is Founder and Honorary Professor of the Department of Political Science at the University of Geneva and Honorary Professor at the European Institute of the University of Geneva.

Its input in the form of initiatives, formal proposals and recommendations constitutes a common basis for deliberations and decisions by intergovernmental European institutions. In order to counterbalance their power and protect the integrity of the Commission's proposals, since the Treaty of Rome voting in the Council is subject to the rule of unanimity if the intent is to modify the Commission's proposals without its consent. From experience, we know that in various decision-making processes there is a wide gulf between negotiations and deliberations based on a coherent proposal and those put forward unilaterally by individual members. The process is much more efficient and rapid in the first instance, whereas in the second the absence of a basic coherent proposal has negative consequences, such as the domination of the large Member States and compromises corresponding to the minimum common consensus.

The key role of the Commission is confirmed by the link existing between its proposals and the *qualified majority* in the Council. It is also evident that the Commission has benefited from the support of the European Parliament and the Court of Justice on many occasions, even if the EP sometimes adopted a rather critical attitude. This is the role of Parliaments in democratic systems and the Commission is the only European institution accountable to the EP, which is not the case for the Council when acting as a non-legislative codecider.

Tension between these two processes appears strongly in the transition period from the previous Treaties to the new institutional architecture of the Lisbon Treaty, as well as during crises and in relation to issues such as climate change and energy. In Copenhagen, a clear demonstration was given of the inefficiency of the individual interventions by the main representatives of the Members. This was also an example of *reductio ad absurdum* proving the necessity for the community method. A parallel case is provided in energy matters where the Member States negotiate bilaterally with Russia. A common approach could give increased power and benefits to the European Union, as in the case of common commercial policy. In the past as now, in the World Trade Organisation the Commission has the mandate to speak in the name of the EU. In the CFSP, the H.R. can guarantee the progressive use of the community method by presenting joint proposals with the Commission. Even before the adoption of the new Treaty, there were some concerns about the future relationship between the President of the European Council and the President of the European Commission – the former representing the highest intergovernmental institution, and the second symbolising the Jean Monnet method or the communitarian approach.

The Treaty of Lisbon established more or less clearly the competences of the President of the European Council. His main function is to facilitate consensus among the members of the European Council and to represent the European Union at the level of Heads of State and governments. The President of the Commission, as a member of the European Council and with the large spectrum of competences of the Commission as the only initiator of main legislative acts and decisions in the EU, has also the essential role of representative of the EU in economic and financial negotiations, in particular. In the World Trade Organization, the Commission speaks in the name of all the members of the Union. These competences, as well as neighbourhood policy, cooperation with developing countries, monetary and economic policies, are related to external action, to the CFSP and to general security and peace.

### **Some ambiguities**

The ambiguity of the respective roles of the two Presidents appeared in the transitional phase when their roles had to be implemented. Despite their agreement and their shared European spirit, there appears to be a shift towards more intergovernmental procedure. A concrete example is the establishment by the European Council of a *Task Force*, headed by the President of the European Council. In my view, this is a wrong move, which tends to strengthen the role of the big Member States and of the President of the European Council. In fact, it is not a *Task Force* or a "*groupe de réflexion*" in accordance with the tradition in the European Union, but rather an informal meeting of

the Ministers of Finance in the presence of Jean-Claude Trichet, Jean-Claude Juncker and Olli Rehn. If the intention were to establish a Task Force, the mandate should have been given to the European Commission which is better equipped to deal with the economic problems which result from the current crisis among Member States. Frankly speaking, the President of the European Council is intervening in the field of competence of the European Commission, while his main task is to facilitate consensus at the highest political level. According to the Financial Times of 24 September 2010: “Yet there is frustration in Paris as well as other capitals at the taskforce’s lack of progress and the rivalry with the Commission”. At the same time, the President of the European Council is making public declarations about the financial and economic crisis, with or without the consent of the President of the European Commission. It is my profound conviction that the two Presidents should act jointly in tandem.

### **Shift towards intergovernmental method?**

This trend towards more intergovernmental procedures at the expense of the community method changes the rules of the game and gives more influence to the larger States. While the initiatives and proposals of the Commission, which aim to express the general European interest, take into account the interests of all the Member States, this is not the case in the intergovernmental approach, which is tending to reappear today in certain areas. This shift of power in the EU coincides with the assertion of national interests, especially by the great European powers. This is the case more specifically in the crisis and the position taken by Chancellor Merkel regarding the Greek crisis. To accept and consolidate this shift would be greatly damaging to the European Union.

It seems that the Member States are trying to recover some of their powers as they appear to be squeezed between the transfer of their powers to the European institutions on the one hand, and to their regions on the other hand. The practice of governance is developing simultaneously at both the European and regional level. At this point, the position and the initiatives of the President of the Commission and of the collegial body as such will be decisive for the future of the EU.

In the intergovernmental procedure, efficiency is reduced and generally results in the lowest common denominator corresponding to the efforts to reach a consensus. The role of the President of the European Council is to facilitate consensus and not to encroach upon the area of competence of the Commission. In the present financial and economic crisis, it is up to the Commission to propose a *global package* of regulations and measures to the Council of Finance Ministers, and to the European Council jointly with the President van Rompuy, for the approval of a general line of action and a common strategy.

Obviously, the community method, which is not applied in the field of external relations, does guarantee balanced decisions and pays more attention to the interests of small and medium-sized countries. By contrast, the intergovernmental process is dominated by the big powers. In short, the use of the community method and its extension is of fundamental importance to the present and future of the European Union.

### **What could be done to consolidate the community method?**

The question is what could be done in order to strengthen the position and the power of the European Commission. The first move was already undertaken by the President of the Commission in the agreement reached with the European Parliament, which is the natural ally of the Commission and which gained more competences through the Lisbon Treaty and more powers through the codecision, legislative and budgetary procedure. The second move is to strengthen the collaboration between the Presidents and to make the tandem more visible to the general European public. The contribution of the Court of Justice is also highly significant.

### **The key-role of the High Representative**

The H.R. in her role as the Vice-President of the Commission and President of the Council of Ministers for Foreign Affairs should be the channel of communication from the Commission to the Council. However, there is some ambiguity as to the double loyalty of the H.R. who, while remaining the Vice President of the Commission, has reduced responsibility to the College. Nevertheless, at present Lady Ashton has kept her office in the Commission on the 12<sup>th</sup> floor of the Berlaymont building. In the future, she may join the headquarters of the European External Action Service. Her European socialization is stronger than the socialization process of the Members of the Coreper who in representing national interests have the task of conveying and explaining the Commission's proposals to their governments. By way of comparison, Lady Ashton is in charge of ensuring the common European interest and assumes two different roles, as H.R. and Vice-President of the Commission. Her position is less ambiguous. It is true that she must resign collectively as member of the College of Commissioners, but will remain in office as the President of the Council of Ministers of Foreign Affairs.

### **The role of social actors and the European challenge of global governance**

In general, the Councils do not cultivate relations with European interest groups, associations or lobbyists while their members are listening to the national, social and economic actors. To offset the role of intergovernmental institutions, the Commission could also rely more on different economic and professional actors and on the European citizens and public opinion. They have an important role to play during the elaboration of the Commission's proposals and during the consultation procedure.

At all levels, social actors exert substantial influence which is all the more difficult to evaluate as these actors are frequently in competition amongst themselves. These influences are exerted through various channels and through consultative bodies - Economic and Social Committee, Committee of the Regions. They are also exerted via informal, unofficial contacts, as for example through the consultations preceding the proposals of the Commission. These processes are less important in the field of Common Foreign and Security Policy, which is mainly managed by the European Council, the Council of Foreign Ministers, the two Presidents and the H.R.

### **Imbalances and integration process**

The case of the financial crisis highlighted the imbalance between monetary union and economic union. The Greek crisis and the threats of other crises in Spain, Portugal, Ireland and other Member States prove that even monetary union does not function efficiently. This was clear from the German refusal and costly delay in assisting Greece. These unbalanced, destabilizing situations can be compared to the Jean Monnet strategy (integration sector by sector) and to the *spillover theory* proposed by Ernst B. Haas. Integration by sector leads to the necessity of new responses to new demands e.g. the proposal for a "Budgetary Federation" by Jean-Claude Trichet and the proposal by the Commission of a pre-review of national budgetary projects, as well as the proposed creation of an economic government of the Eurozone and more efficient economic governance of this core zone. This process of integration was referred to by Henri Brugmans as "fédéralisme à l'envers".

The Eurozone corresponds to Karl W. Deutsch's concept of a *core federal area*. The creation of a core area was also proposed in 1994 by Karl Lammer and Wolfgang Schäuble. At present, the Eurozone seems to correspond to these concepts and proposals. It introduces a clear differentiation between Eurozone members and other members of the EU, in accordance with the principle that all members have the possibility to join this core area. I wonder whether the disposition of the Lisbon Treaty concerning *enhanced cooperation* might not be used in order to establish an *economic government* for the Eurozone.



### **The case of the common energy policy**

Another case is the establishment of the common energy policy, in relation with the common environmental policy. It is apparent that Germany, France, Italy and also the Netherlands are developing strong bilateral relations with Russia. Bilateral agreements tend to consolidate bilateral relations and to constitute an obstacle to the adoption of common policies. It is an example of the strong interrelationship between external and internal policy. It is also a case for the Commission to assume a leading role and to propose a global project based on the “*de facto solidarity*”, deep-rooted cultural links and general interdependence between the European Union and the area around Russia and Ukraine. This project, implying the establishment of common institutions and the adoption of a common strategy in economic as well as political and security matters, will constitute a *European great design*, which Denis de Rougemont had wished for – a *great Europe* based on a common European culture and on the federal principal of “unity in diversity”.

### **Some concluding remarks**

The general overview seems to indicate an urgent necessity for the Commission to take the initiative and propose a more global view of all the measures adopted or proposed regarding the financial, economic and pending social crises, avoiding sectorial and uncoordinated measures as well as too much emphasis on the financial system. A global view could at the same time be the basis for the future meetings and decisions of the G20 under the presidency of France.

Various new instruments of communication and access to decision-making centres in the EU e.g. the role of citizens and horizontal networks, initiatives, consultation, legal space, are contributing to the emergence of *European governance and the European political space*. This could create a temptation to adopt a concept of a polygon of various forces leading to main political decisions. Such a concept minimizes the special role of political authority, and as in the Truman theory tends to present political authority as one of the actors among pressure or interest groups. In my opinion, in the midst of these multiple influential forces, governments at different levels and the European institutions maintain their capacity to take general decisions which constitute an obligation to all citizens and residents and have the power to implement them in the variety of manners corresponding to the different levels. Yet today the general system is much more complex and diversified but also more manageable due to the advances in information technology. It proves the need for a communitarian or federal approach in the European Union.

In conclusion, the Lisbon Treaty has created a new distribution of powers and competences between the President of the Commission and the two newly established functions, the President of the European Council and the High Representative. The future behaviour of the members of the “Troika”, their rivalry or their close collaboration could be decisive for the evolution of the European Union. Their collaboration could facilitate the adoption of common policies in the energy-climate sector and will have a direct impact on the conduct of Common Foreign and Security Policy. It will contribute to the assertion of the European Union not only in relation to Russia but also as a global actor. In this way, the European Union will become an influential actor as a normative and soft power, also as a leading power in favour of peace, development and justice in the world.



# The EU and the Challenge of Global Macroeconomic Governance

David Vines\*

## Introduction

The world has been through a financial crisis the effects of which have been catastrophic. The crisis led to the near seizure of financial markets across the world, and subsequently caused the most rapid downturn in global economic activity since the Great Depression.

Due to an unprecedented show of cooperation and a worldwide coordination of fiscal and monetary policies, an all-out collapse has been prevented. But in order to repeat a future crisis, the same cooperation and coordination will be needed to address the global savings-investment imbalances that continue to pose a threat to global stability. Only by learning the lessons from this crisis can policy-makers guard against a repeat crisis.

## Key policy issues

### *1. Policy-makers must better regulate finance*

The greatest policy failure causing the crisis was not monetary policy but the inability of systems of financial sector regulation to contain the growth of excessive, uncovered, risk-taking among financial institutions. A business environment with limited liability provisions gave rise to incentives to take on more risk, while deposit insurance and state support for institutions deemed ‘too big to fail’ has left taxpayers facing the cost of unprecedented rescue operations.

Regulatory reform is clearly needed. This now appears to be moving in two directions. The first has concentrated on addressing evident weaknesses in the Basel Committee regime that has shaped financial sector regulation over recent decades. The second element aims to address the moral hazard problems of institutions that are deemed ‘too big to fail’. The Financial Stability Board, set up at the meeting of the G20 in London in April 2009, has been examining various policy responses. But despite initiatives, international cooperation in this area has flagged fast.

### *2. Policy-makers must create a clear fiscal regime in macro policy-making*

The short-run policy response to the crisis involved an unprecedented display of global monetary cooperation. Attention then switched to solvency. Fiscal authorities embarked on a range of schemes to recapitalise the banking system and to put in place fiscal stimulus programmes. In addition central banks introduced quantitative easing measures aimed at cheapening longer-term borrowing – i.e. flattening the yield curve – and thereby boosting private sector balance sheets.

The public sector was obliged to go into deficit – and by unprecedented amounts. But while fiscal expansion has been effective at aiding global recovery, fiscal authorities cannot spend beyond their means forever. The question remains: How quickly should the deficit be closed in the US, and Europe, including the UK?

---

\* Professor Economics and Fellow of Balliol College at Oxford University.

### *A fine balancing act*

Timing is crucial. In the short run, the public sector must supply enough assets to be held by the household sector as it increases its saving, and to be held by the financial sector as it deleverages out of its holdings of risky assets. By contrast, in the medium term there is the risk that a sustained recovery might be jeopardised by a fiscal crisis, or, over a longer period, by sustained underlying fiscal difficulties. It will be difficult for policy-makers to detect when the short-run need is exhausted and the fiscal deficit should be cut.

A significant concern is whether policy-makers can credibly commit to reducing the budget deficit at the appropriate speed. Policy-makers may come under pressure from markets to cut the deficit too fast. It is critical that fiscal institutions are sufficiently robust to confront this pressure.

For this reason, some economists advocate fiscal responsibility councils. This fiscal authority would be independent from day-to-day politics, analogous to central banks that have been made independent to guard against related credibility problems.

### **3. Policy-makers must address the global savings-investment imbalances**

The global savings-investment imbalances are the result of excess savings in countries with current-account surpluses and a shortage of investment in countries with current-account deficits. The surplus countries are those with competitive exports, facilitated by undervalued exchange rates, such as Germany, Japan, and countries in East Asia, notably China. In the years leading up to the crisis, an excess savings from these countries was invested in deficit countries, such as the UK and the US, enabling them to continue purchasing surplus-country exports. These current-account imbalances must be dealt with before they unravel and cause another crisis. Unfortunately, the fiscal expansion which was necessarily undertaken by many countries to mitigate the effects of the crisis has made this rebalancing act far more difficult.

#### *The cooperative solution and its risks*

The cooperative solution is for surplus countries to increase their spending, leading to a disproportionate expansion of domestic demand in these countries. This would need to be supported by an appreciation of the exchange rates in surplus countries.

Deficit countries for their part will need to cooperate by cutting spending. Net exports in these countries need to expand, with this expansion being facilitated by a devaluation of the real exchange rates in deficit countries.

One risk is that policies fail to stimulate a sufficient recovery of domestic demand in the surplus countries. While China appears to be moving in the required direction, difficulties remain in producing a sufficient expansion in domestic consumption – despite the large fiscal injection. A significant fraction of the fiscal stimulus, as well as private sector profits, have been used to finance large increases in investment, rather than increases in consumption, and these may be difficult to maintain.

A second concern is that Europe may contribute to this global imbalance, as a result of cutting in the countries of southern Europe who are in difficulty, unmatched by higher spending in northern Europe. While the savings-investment imbalances are global, the same imbalances also exist within Europe. Southern European countries such as Greece, Italy, Portugal, and Spain, as well as Ireland, are in fiscal difficulty. At the same time Germany is highly competitive and has an expected current-account surplus of \$187 billion. Rebalancing in the Eurozone will therefore depend solely on a significant rise in domestic demand within Germany. This is especially true if global pressures cause the euro to appreciate, removing the option of a depreciation of the Euro.

A third concern is that, in the absence of the necessary recovery of demand in emerging market economies, and in Europe, the US may face competitive pressures from both emerging markets and

from Europe. And the might again become the ‘spender of last resort’ – an uncompetitive economy spending beyond its means - as in the years running up to the crisis.

### *The prisoner’s dilemma*

Countries need to make adjustments described above. While this will be costly, the cost of inaction could be far greater. This virtuous cycle will not be self-enforcing – as the previous decade has so clearly demonstrated. While it is clearly in the interests of all countries to rebalance the world economy, countries may find it easier to wait for other countries to act first and themselves renege on any responsibilities that are politically difficult and costly to implement. This is a global prisoner’s dilemma, and at present the G20 and IMF do not have the tools to deal with it.

## **The Reform of Global Macroeconomic Governance**

The global crisis could have been averted if there had been a different way of managing macroeconomic policy globally. It should become the task of the G20 – working with the IMF – to make known the existence of this prisoner’s dilemma described above and to point out when countries are taking the ‘non-cooperative’ option. The IMF’s *World Economic Outlook* is the natural vehicle for this analysis, but so far the Fund has been unable to issue strong enough warnings. The IMF will need stronger powers and will need to reform its governance structure to make this possible.

This new system will require increased will surveillance over fiscal policies in advanced countries. A core requirement of any satisfactory global system is to ensure that emerging market countries do not build up excessive savings, thereby driving down world interest rates and allowing the global imbalances to continue. Preventing these countries from deliberately pursuing overly competitive exchange rates will help make this possible.

To encourage emerging-market countries not to set their exchange rates at depreciated levels, the IMF will need to provide credible insurance for such emerging-market currencies, in the form of a new provision of international reserves for emerging market economies. Such a scheme might be one in which in which the IMF issued Special Drawing Rights to emerging market countries, and was also given the power to make emergency issues of such rights to fight crises, making the IMF a ‘lender of first resort’..

### *A change to IMF governance is needed*

These reforms imply an unavoidable loss of sovereignty. They would also limit the ability of countries that issue reserves, in particular the US, to run excessive deficits. They would limit the ability of countries – both in emerging-market Asia and in Europe - to curtail domestic demand too rapidly - as in Europe – of to continue to concentrate on export expansion by setting their exchange rates in ways that harm the rest of the world

It will be impossible to get agreement on a major role for the IMF in influencing the policies of either advanced countries or emerging-market countries unless changes are made to the governance of the IMF. The Fund must inspire trust and confidence in both sets of countries. This will require changes in the IMF’s distribution of power, and voting structure, in a way that reflects the changing realities of the world balance of economic power, both reducing the voting weight of Europe and enhancing that of emerging-market economies . These changes must go much further than those agreed at the G20 summit in London in April 2009.

Reform must also place the responsibility for the delivery of improved policies more firmly in the hands of the management of the IMF. Stepping back from day-to-day surveillance would enable the IMF’s Executive Board to carry out the task of external enforcement described above.

## **Conclusion**

The world has turned out to be highly volatile and crisis-prone – the great moderation turned out to be a great illusion. The toxic combination of savings-investment imbalances and inadequate financial regulation must not be allowed to happen again. The best solution is to reform the international monetary system.

Back in 1944, when the Bretton Woods system was established, Keynes believed that there was a need for a set of rules of the game. This argument is true today. The world needs a rules-based international monetary system: rules governing the international surveillance of policies by the IMF.

This is a demanding agenda. But a demanding agenda is necessary if policy-makers are to guard against a re-run of the past two years.

