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La situation économique de la Turquie pendant la guerre d'Indépendance

Jacques Thobie

Lorsqu'à partir de mai 1919 Mustafa Kémal commence à organiser la résistance et donne le coup d'envoi de la guerre d'Indépendance, le pays est loin d'être remis, sur le plan économique, des conséquences de la Grande Guerre[1].

Sauf sur le front du Caucase, et grâce à la brillante victoire de Gallipoli (Dardanelles), l'Anatolie occidentale et centrale n'a pas été trop touchée directement par les combats[2] ; il en va de même pour la Thrace et la capitale. Les entreprises modernes, contrôlées pour l'essentiel par le capital étranger, n'ont donc pas subi de trop graves destructions, et les besoins de la guerre elle-même ont engendré quelques ponctuelles réalisations, comme par exemple, avec l'aide de la technique allemande, le difficile franchissement du Taurus par la ligne du Bagdad en 1917.

Néanmoins, au moment de l'armistice de Moudros, les entreprises industrielles et commerciales modernes sont à bout de course: les chemins de fer et les transports urbains, les services municipaux des grandes villes (Eaux, Gaz, Electricité), les ports (notamment d'Istanbul et d'Izmir), ont fonctionné sans interruption pendant quatre ans, sans toujours disposer de personnels compétents, et sans espoir de pouvoir remplacer les matériels en place ; plus grave encore, l'Administration des Phares (société française) a subi la destruction de nombreux phares et feux. Seules les banques, et notamment la Banque impériale ottomane (banque de l'Etat) tirent leur épingle du jeu. A leur retour, les anciens concessionnaires désirent revenir comme avant, au beau temps des capitulations : alors que le personnel de ces sociétés a été très turquifié pendant la guerre, des minoritaires grecs, juifs et arméniens sont embauchés ou réembauchés. La situation de l'économie agricole est moins mauvaise, dans la mesure où l'agriculture ottomane est fort peu mécanisée : nombre de bras manquants vont revenir à la suite de la démobilisation[3] .

Du côté des entrepreneurs et industriels alliés, la politique menée sera, en fonction des possibilités, de conservation de l'acquis et de tentatives de récupération des intérêts allemands ; du côté ottoman, il convient de donner aux sociétés étrangères, dont l'activité est primordiale, les moyens de fonctionner dans le strict respect des contrats signés, avec une parfaite incertitude sur l'évolution future de la situation politique et économique.

La remise à niveau de l'économie, objectif conjugué du gouvernement ottoman et des autorités d'occupation, passe, pour de nombreuses firmes, par l'augmentation des tarifs, rendue nécessaire par l'approfondissement de l'inflation. La plupart des entreprises obtinrent cette autorisation des hauts-commissaires (anglais, français et italien) dans les premières semaines de 1919, la mauvaise volonté du haut-commissaire britannique entraînant quelques retards pour des sociétés à capitaux français, le summum étant avec l'Administration des Phares[4], qui n'obtiendra de Londres le triplement des droits de phares qu'en mars 1921[5].

Istanbul a toujours été le grand centre distributeur du bassin de la Mer Noire, d'où partent les routes commerciales pénétrant vers le Nord, l'Est et le Sud. Pendant la guerre, la fermeture des Détroits épuisa les stocks des

pays tributaires d'Istanbul et d'Istanbul elle-même. La guerre terminée, d'importants stocks y furent alors accumulés, en vue de leur réexportation vers la Russie, le Caucase, la Roumanie, la Bulgarie et l'Asie mineure. De fait, la deuxième moitié de 1919 et les premiers mois de 1920, virent le développement d'une intense activité commerciale[6]. Mais au bout de quelques mois, le mouvement fut enrayé : les pays destinataires se trouvèrent coupés ou bien leur change se déprécia, et une à une les portes se fermèrent. Les envois en Roumanie et en Bulgarie furent de plus en plus ralentis par la tendance de ces pays à établir des relations directes avec les centres commerciaux de l'Occident. Les transactions avec les ports de la Russie méridionale, réoccupés par les armées bolcheviques, devinrent plus aléatoires. Enfin, les marchés de Thrace et d'Anatolie cessèrent d'être accessibles[7].

En effet, Mustafa Kemal débarque à Samsoun (Samsun) le 19 mai 1919, quatre jours après le débarquement à Smyrne (Izmir) des premiers contingents du corps expéditionnaire grec. Le déploiement de l'armée hellène, la mise sur pied et le renforcement progressif de l'armée kémaliste vont entraîner la formation d'un front qui rendra de plus en plus problématiques les relations avec la capitale ottomane; le paraphe du traité de Sèvres, en août 1920, contribuera à l'approfon-dissement de la rupture, tant politique qu'économique.

L'interruption des communications avec l'Anatolie prive Istanbul d'un marché très important, tant pour les importations que pour les exportations. En conséquence, la capitale doit importer de l'étranger dans une bien plus grande mesure, des articles de première nécessité et d'alimentation (farines, céréales et bétail), qu'il est désormais impossible d'obtenir des centres fournisseurs traditionnels d'Istanbul ; l'occupation militaire hellénique entrave même les échanges avec les localités très proches de la Marmara. Les réquisitions absorbent une part importante des récoltes, et les difficultés de tous ordres, en matière de transport notamment, rendent à peu près impossible l'acheminement des produits vers la capitale ou leur exportation à l'étranger[8]. Toutes ces difficultés économiques ont des répercussions monétaires et financières : les cours du change sont sujets à de violentes fluctuations, et le Trésor ottoman, privé des recettes fiscales de l'Anatolie, demeure dans les plus grandes difficultés pour supporter ses charges même les plus urgentes ; les recettes de l'Administration de la Dette publique ottomane sont également affectées par la rupture avec l'Anatolie[9].

Pendant près de trois ans, deux entités économico-militaires vont se partager inégalement l'Anatolie. Les Grecs s'appuient notamment sur le riche arrière-pays agricole de Smyrne et essaient au maximum de vivre sur le terrain, grâce à de massives réquisitions; pour le complément, leur liaison avec Athènes est complètement assurée.

Du côté turc, la mise sur pied d'une armée performante pose à Mustafa Kemal et à ses amis de complexes problèmes. En ce qui concerne l'alimentation et l'habilement des troupes, la situation ne cessera de s'améliorer. D'abord, les kémalistes vont progressivement élargir la base territoriale disponible à partir du centre nerveux d'Ankara. Outre les régions du centre et du nord-est de l'Anatolie, dès 1920, ils peuvent s'appuyer sur deux régions agricoles de grande qualité, le vilayet de Konya et celui d'Adana : ce sont les deux seuls districts qui ont esquissé une modernisation de leur agriculture avec la présence du plus grand nombre de charrues et de moissonneuses[10]. La riche Tchoucour-Ova (céréales diverses, tabac, coton, fruits, bétail ...) sera entièrement disponible après le retrait des troupes françaises en octobre 1921 ; il en sera de même peu après de la région d'Antalya.

Ainsi, même s'il faut compter sur une sérieuse baisse de la production par rapport à 1914[11], due au double choc de la Grande Guerre et de la guerre de Libération, les richesses disponibles existent, mais toute la question politico-sociale tient dans leur mise en œuvre. Si les petits et moyens producteurs, dans l'ensemble, collaborent très tôt avec les kémalistes, il n'en va pas de même avec certains notables-propriétaires tournés vers l'exportation agro-alimentaire. Toutefois,

L'évolution va aller dans le sens des ralliements : des notables qui ont fait main-basse sur des affaires arméniennes rejoignent le kémalisme comme garantie, d'autres craignant la concurrence des Grecs vont progressivement apporter leur soutien à Mustafa Kemal[12]. Dans l'ensemble, il n'y aura donc pas de problèmes majeurs pour le ravitaillement et l'entretien des troupes mais cette armée, très peu mécanisée, souffrira d'un manque de bêtes de somme[13] et la question des transports restera jusqu'à la fin un souci important pour l'Etat-Major.

Reste la question de la formation et de l'armement des troupes, qui posent aux kémalistes de redoutables problèmes financiers. Les forces nationales sont appelées à Ankara pour y être entraînées, disciplinées et armées, une nouvelle école pour la formation des officiers est créée. Les relations avec les bolcheviques, excellentes dès le début, sont accompagnées d'envoi de matériels militaires russes en petites quantités. Après le traité de Moscou de mars 1921, « armes et munitions russes traversent la Mer Noire en quantités croissantes »[14]. L'association Karakol d'Istanbul ayant été dissoute par les Alliés, Mustafa Kemal en crée une autre, regroupant fonctionnaires et officiers, l'Organisation de la Défense Nationale *(Müdafaa-i Miliye Teşkilâti)*: ses membres commencent à envoyer des armes et de l'équipement. Après l'accord Franklin-Bouillon du 20 octobre 1921, les forces françaises laissèrent aux kémalistes des armes et des équipements radio.

Au début, l'argent manque terriblement. Jusqu'à l'été 1921, même si la moitié du budget de la GAN est consacrée à la défense, l'argent fait souvent défaut, les soldes des militaires et les salaires des fonctionnaires restant impayés pendant plusieurs mois. L'envoi d'or par Lénine au printemps 1921, va contribuer à améliorer la situation et permettre l'achat de nouvelles armes. On sait peu de choses sur les rentrées fiscales d'Anatolie qui vont également grossir avec le temps, Mustafa Kemal soignant particulièrement ses relations avec les agences restées ouvertes de la BIO. Le gouvernement kémaliste veille à ce que les mouvements d'argent se fassent dans les règles et le respect des contrats, autant que faire se peut. Il en va de même avec les ponctions faites sur les revenus de l'Administration de la Dette, même si les intentions futures de Mustafa Kémal sont clairement annoncées. Le gouvernement d'Ankara reçut également des dons de l'étranger, ceux venus de l'Inde paraissant importants[15], bien qu'il soit impossible d'avancer un chiffre.

On comprend, dans ces conditions, que les réquisitions ont été à la base de la mise en puissance de l'armée, en faisant à la fois appel au sentiment patriotique et national, et aussi par des éléments de coercition. Ainsi, au début, autour de la région de Smyrne, des petits fronts ponctuels se sont mis en place, dont le ravitaillement était absolument et directement assuré par la population de ces zones ; Ankara envoyait, dans la mesure du possible, des officiers et des troupes[16]. Peu à peu, le dispositif prit une allure plus normale et efficace, avec la mise en place d'un Etat-Major et d'un commandement unifié. Cette évolution alla de pair avec la constitution d'un véritable front, et des besoins décuplés.

Le 5 août 1921, alors que se prépare un affrontement ressenti comme décisif[17], la Grande Assemblée Nationale, après de sévères discussions, accorde à Mustafa Kemal les pleins pouvoirs, avec le commandement en chef. Celui-ci va alors prendre immédiatement dix mesures de réquisition. « Je crois devoir faire cet exposé, insiste le Ghazi en 1927, pour vous donner une idée de combien de menus détails il faut s'occuper, si l'on veut gagner une guerre ». Je vais reproduire *in extenso* ces décisions, car elles illustrent parfaitement, au moins sur le plan qualitatif, le niveau de développement de l'économie anatolienne.

« – Je constituai dans chaque district une «commission nationale de réquisitions ». Je réglai le mode de distribution, aux diverses sections de l'armée, du produit de l'activité de ces commissions ;

- chaque foyer dans le pays avait l'obligation de préparer un trousseau se composant d'un assortiment de linge, d'une paire de chaussette et d'une paire de chaussons pour les livrer aux Commissions;

- je procédai au prélèvement, à charge d'indemnisation ultérieure, de 40% des marchandises en stock, mentionnées ci-après, et se trouvant entre les mains des commerçants ou de la population : toile pour linge, toile américaine, baptiste, coton, laine et mohairs bruts ou préparés, tous genres de tissus propres à la fabrication de costumes pour hommes pour hiver et été, grosse toile, cuir de veau, vaquette, cuir pour semelles, cuir jaune et noir, maroquain, chaussons façonnés et non façonnés, souliers, clous de fer pour souliers, clous en fil de laiton, fil servant à l'usage des cordeliers et des selliers, métal pour fers à cheval, fers à cheval, clous, musette, licous, couvertures pour chevaux, sangles, étrilles, bâts, gants de serge pour chevaux, cordes ;
- 40% des stocks ci-après étaient également prélevés aux mêmes conditions : blé, paille, farine, orge, haricots, gruau, pois chiches, lentilles, bétail de boucherie, sucre, pétrole, riz, savon, beurre, sel, huile, thé, bougies ;
- j'imposai à la population la charge d'exécuter gratuitement, une fois par mois, des transports militaires avec les moyens dont elle disposait encore, en dehors de ceux réquisitionnés pour les besoins de l'armée[18] ;
- je fis mettre la main sur tous les biens abandonnés pouvant servir à l'habillement et au ravitaillement de l'armée ;
- j'exigeai la livraison dans l'espace de trois jours, de toutes les armes et munitions propres à un usage militaire et se trouvant entre les mains de la population ;
- je réquisitionnai 40% des stocks de benzine, graisse, huile de vacuum, suif, huile de graissage pour machine, montres et semelles, vaseline, pneus d'automobile et de camion, dissolutions, bougies, colle forte à froid, colle forte française, appareils de téléphones, câbles, piles électriques, fils isolateurs et autres articles similaires, acide sulfurique ;
- je fis dresser la liste de toutes les forges, menuiseries, fonderies, selleries, harnacheries, charronneries et ateliers de caboteurs, avec les noms des artisans et la capacité de production de chaque atelier[19]. Je fis noter les noms des artisans capables de fabriquer des épées, des sabres, des lances, des baïonnettes et des selles.
- Je fis également mettre la main sur 20% des voitures à ressort à quatre roues, des attelages à bœufs et à chevaux avec chariots à quatre roues, des « Khagnis » (chariots à deux roues) y compris leur harnachement, de même que 20% des bêtes de trait, de selle ou les bêtes servant à l'attelage des canons ; des bêtes de somme, des chameaux et des ânes.

Messieurs, je fis partir dans les zones de Castamonu, Samsun, Konya et Eskisehir respectivement, les Tribunaux d'Indépendance, que j'avais fait instituer pour assurer l'exécution de mes ordres et de mes communications »[20].

C'était bien sûr une gageure de vouloir traiter d'une économie de guerre sur laquelle nous ne disposons d'aucune recherche spécifique, et avec quelques sources peu adaptées au sujet. Ces quelques lignes permettront cependant d'apercevoir l'ampleur des efforts, des sacrifices, qui ont été demandés aux acteurs économiques à tous les niveaux, après quatre années d'une guerre mondiale épuisante pour les populations et les structures économiques et, qui plus est, une guerre perdue. Il est vrai que l'enjeu était décisif : sauver la nation turque et lui donner les bases d'un futur développement. L'objectif proposé par le Pacte National était certes de nature à inciter au courage et à la persévérance mais, surtout dans les débuts, l'affaire n'allait pas de soi. Il a fallu aussi toute la persuasion, l'autorité, la compétence d'un grand stratège, Mustafa Kemal, qui a su réunir autour de lui les forces humaines nécessaires. Il est intéressant de noter que, dès les débuts de la guerre d'Indépendance, le débat est engagé sur l'alternative : économie libérale et étatisme. La République turque ouvre son histoire dans une situation économique particulièrement désastreuse[21], mais l'heure des décisions et des réalisations va venir, et c'est là une histoire que nous connaissons beaucoup mieux.

NOTES :

[illegible] communication inédite a été prononcée au Symposium de Bad Kreuznach le 1er décembre 2001.

[illegible] certaines installations côtières, comme par exemple la jetée, les dépôts et les réservoirs de la Société des Mines de Balia-Karaïdin à Akçay ;

[illegible] naturellement tenir compte des pertes en vies humaines qui ont été considérables. La population de la Turquie dans ses frontières de Lausanne était estimée en 1914 à 16,3 millions d'habitants et le recensement de 1923 en donnait 13,6 millions ; en 1920, la population peut être estimée à 11 millions. Voir Yahya TEZEL, *Cumhurieti Dönemi Iktisadi Tarihi 1923-1950*, Ankara, 1982. L'auteur déplore qu'il n'y ait encore aucune étude économique publiée sur la période de la guerre d'Indépendance.

Depuis sa création en 1860, la Société Collas et Michel, concessionnaire de l'Administration des Phares de l'Empire ottoman, est en butte aux contestations et à l'hostilité des Anglais, mécontents de fournir la grande majorité des droits de phares pour le plus gros profit d'une société française ; les revenus sont, il est vrai, fort juteux.

A ce moment, le concessionnaire P de Vauréal demande le quintuplement des droits. Archives du ministère des Affaires étrangères à Paris, Levant, Turquie, 438 ; notamment Phares à MAE, le 13.3.1921. Voir Jacques THOBIE, *L'administration générale des Phares de l'Empire ottoman et la Société Collas et Michel 1860-1960*, L'Harmattan, Paris, 2004, 300 pages.

Ce n'est pas le cas du secteur minier, à Héraclée (Eregli) pour le charbon et à Balia-Karaïdin (Balya) pour le plomb argentifère, qui ne pourra vraiment redémarrer qu'à partir de 1924.

Archives de la Banque impériale ottomane (ABIO). Rapport à l'A.G. du 26 juillet 1922, pp. 10-11.

Le Rapport de l'A.G. du 3 novembre 1921. « En dehors des difficultés découlant directement de la situation spéciale au Proche-Orient, le marché commercial a subi également le malaise économique général né de la baisse rapide et, dans certains cas continue, des prix de gros, à partir du second semestre de 1920 » (p.10).

Néanmoins, le président de la BIO est optimiste : « En dépit de la situation troublée et des événements défavorables, l'activité de la banque a été très grande ; grâce à son prestige, à ses relations, à ses fortes attaches en Orient et ailleurs, notre établissement a pu, dans l'ensemble, développer ses activités bancaires. Les grands centres de Constantinople et de Smyrne ont particulièrement travaillé ; en Anatolie, les opérations ont naturellement été réduites et quelques agences ont dû être fermées temporairement...L'activité de nos succursales de Grèce, Syrie, Palestine, Chypre et Egypte a été satisfaisante et il y a eu un fort mouvement d'affaires en Mésopotamie ». Id. p. 12.

Charles ISSAWI, *The Economic History of the Middle East 1800-1914*, TUCP Chicago and London, 1968, pp. 66-70.

Entre 30 à 40% selon les secteurs.

Voir à ce sujet Dogan AVCIOGLU, *op. cit.*

« La guerre a tellement raréfié les moyens de transport par bêtes de somme que leur usage est devenu prohibitif par les dépenses qu'il entraîne ». A.G. de la Société anonyme ottomane des Mines de Balia-Karaïdin du 4 mars 1920. Rapport au C.A., p. 7.

S.J. SHAW & E.K. SHAW, *History of the Ottoman Empire and Modern Turkey*, vol. II, *Reform, Revolu-tion and Republic 1808-1975*, CUP, 1977, p. 355.

Voir Yahia TEZEL, *op. cit.*

Discours du Ghazi Moustafa Kemal, président de la République turque, d'octobre 1927 ; traduction française, K.F. Koehler Verlag, Leipzig, 1929, p. 364.

Il s'agit de la bataille de la Sakarya, qui dura du 23 août au 13 septembre 1921 : Ankara était définitivement dégagée, mais la victoire ne put pas être exploitée.

On gratte vraiment les fonds de tiroir.

Si ces listes ont été conservées dans les archives, il y a là une précieuse source sur l'état socio-économique des régions concernées.

Discours du Ghazi Moustafa Kemal, op. cit., pp. 487-488.

Selon Yahia TEZEL, *op. cit.*, l'ensemble des morts et des disparus dans la grande Guerre et la Guerre d'Indépendance, pour l'espace de la Turquie de Lausanne, s'élève à 1,8 millions de personnes, soit plus de 13% du total.

Y a-t-il une Mentalité Balkanique?[1]

Antoaneta Olteanu

L'histoire et la géographie ne sont que des ébauches sur lesquelles l'humanité vient ajouter les détails[2]

A partir des mots de Robert Kaplan, il est beaucoup plus facile de comprendre la grande diversité d'États, grands ou petits, qui morcèlent la carte du monde, mais surtout à propos de l'Europe, l'existence de zones de conflit, disputées, revendiquées par plusieurs nations et qui, effaçant les lignes tracées sur le papier, troublent la vie quotidienne des habitants jetés, souvent, dans des situations de crise par les controverses des politiciens. C'est de la même façon que les Balkans furent eux aussi compris comme un territoire instable – en fait, le contour même de la région n'est pas très clair, les États considérés comme balkaniques différant d'une vision politique à une autre. Or, dans le contexte contemporain de la mondialisation, qui met un accent particulier sur le spécifique national, régional, ethnique des populations intégrées dans la grande Union Européenne, ce mélange ne devrait pas surprendre. En décrivant l'Europe telle qu'il la voyait, l'écrivain polonais Andrzej Stasiuk proposait l'image suivante : « La carte de l'Europe rappelle une large assiette contenant un plat raté. Côtelette allemande, un tas de pommes de terre russes, de la salade française, des asperges italiennes, dessert espagnol et, à boire, du jus de fruit anglais. Çà et là, des taches de sauce. De la sauce hongroise, de la sauce tchèque, des œufs à la roumaine, maquereau suédois-norvégien et morue en hors-d'œuvres, de la moûtarde du Bénélux, des épinards polonais, des tranches de pain grec, friable, en un mot, un méli-mélo »[3]. Un méli-mélo composant un repas, varié, c'est vrai, parfois surprenant, mais où chaque élément distinctif s'harmonise avec un ou plusieurs « ingrédients » voisins ou apparentés. En fin de compte, ce méli-mélo devrait être une constante de la façon de vivre des individus – et ce, malgré des tentatives désespérées, le long de l'histoire, pour tout soumettre à une rigueur de caserne. Théoriquement, tout peut être réduit, simplifié, schématisé, mais, en réalité, le mélange des éléments et les influences collatérales sont bien plus nombreuses et constituent le naturel, le vivant même.

Mais la fragmentation géographique est une réalité, parce que les montagnes divisant la région confèrent à celle-ci un ensemble de traits spécifiques. A l'immense chaîne de montagnes, ayant la forme d'un **S** renversé, qui s'étend du sud des Carpates à la Turquie anatolienne viennent s'ajouter, à l'ouest, les divisions imposées par les Alpes Dinariques qui traversent la Dalmatie, l'Albanie et la Grèce, se prolongeant vers la mer et formant de nombreuses îles. La région fut, de la sorte, inévitablement divisée en de petites unités, où différents groupements ethniques consolidèrent leurs positions. Les montagnes furent ainsi, maintes fois, un obstacle naturel à des combinaisons régionales, politiques, économiques ou culturelles. Les groupes ethniques se concentrèrent sur le développement de cultures nationales distinctes, d'économies locales et sur l'autonomie politique. D'ailleurs, c'est la montagne qui divisa sur la verticale chaque

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[1] Cette étude fait partie du volume *Homo balcanicus. Aspects de la mentalité balkanique*, Ed. Paideia, Bucarest, 2004.

[2] Robert D. Kaplan, *La răsărit, spre Tartaria. Călătorii în Balcani, Orientul Mijlociu şi Caucaz*, Ed. Polirom, Iaşi, 2002, p.17.

sous-région en zones plus basses, favorables à l'agriculture et à l'élevage, et en zones moins favorables, rocheuses, qui devinrent peu à peu une sorte de lieu d'exil et de refuge pour des groupes ethniques chassés des régions plus attrayantes, de la vallée et du littoral.

De telles différences peuvent être décelées dans les Balkans. Mais elles proviennent des différences inhérentes qui existaient déjà au sein de l'Empire byzantin et de l'Empire ottoman[4]. Peut-être que la plus importante différence (voire la seule ?) est la différence confessionnelle : les communautés orthodoxes orientales, musulmanes, catholiques et évangéliques forment une mosaïque diverse de frontières et d'interpénétrations. Non seulement leurs doctrines diffèrent, mais aussi les pratiques associées, qui incluent les fêtes, les interdits, les rituels, les costumes, la cuisine ou les mœurs sexuelles. D'une grande importance sont aussi les variations du paysage, l'alternance collines-vallées, les régions littorales de la Méditerranée et de la mer Noire, qui entraînent diverses formes de commerce et de communication culturelle avec le reste du monde.

Si les différences, en principe, ne semblent guère nombreuses, voyons quelles seraient les ressemblances du point de vue de la vie quotidienne dans cette région qui, dans une certaine mesure – mais aucune généralisation n'est possible –, montre une sorte d'homogénéité. On a essayé d'esquisser une mentalité balkanique, mais les tentatives ont le plus souvent échoué. Le terme de mentalité balkanique a été utilisé pour la première fois en 1918 par le grand géographe serbe Jovan Cvijic, dans un ouvrage consacré à la géographie humaine, *La Péninsule Balkanique*. Cvijic prenait en considération les caractéristiques psychologiques ou intellectuelles et morales des peuples, qu'il concevait comme le produit d'un ensemble de facteurs prenant son origine dans la nature de l'environnement géographique. Une pareille mentalité est le résultat d'un ensemble complexe de facteurs géographiques, historiques, ethniques et sociaux. Dans son étude d'anthropo-géographie, Cvijic se proposait de structurer l'espace politique des Balkans compte tenu des caractéristiques géographiques et géomorphologiques de la péninsule, qui se superposaient tout naturellement aux liens et rapports que cette région entretenait avec l'Europe centrale et occidentale ; aussi en arrivait-il à utiliser les termes géopolitiques de centre et périphérie[5].

Les traits géographiques des Balkans (d'une part, le littoral de l'Asie mineure, relié du point de vue géomorphologique au continent, d'autre part, le bloc continental se trouvant dans le même rapport génétique avec l'Europe) constituent les conditions naturelles de la fusion qui rendit possible le processus bilatéral de l'absorption de la périphérie par le centre et de transformation de l'espace périphérique en un espace central. Ces deux types de caractéristiques géomorphologiques firent de cette région la plus importante périphérie du centre (Asie Mineure et Europe), aussi bien dans l'Antiquité qu'à l'époque moderne. Ce type de relations a fait que les Balkans deviennent un centre dès la période byzantine, mais ce développement a été arrêté par la conquête ottomane qui transforma la péninsule en une périphérie permanente de l'Europe, où l'accent était mis non sur son apport culturel, mais sur son importance politique et stratégique. « En raison des liens établis par ces peuples dès le Moyen Âge avec l'Empire, leurs classes dirigeantes et instruites furent poussées à adopter bien des traits de la civilisation byzantine, ce qui les fit participer à une tradition culturelle commune et finit par contribuer même à la formation de celle-ci. Cette tradition est formée de différents éléments – entre autres, le christianisme de type oriental, la reconnaissance de la primauté de l'Église de Constantinople, la reconnaissance – du moins tacite – du fait que l'empereur byzantin avait autorité sur l'ensemble du monde orthodoxe, l'acceptation des lois romano-byzantines et la conviction que les normes littéraires et les techniques artistiques cultivées dans les écoles, les monastères et les ateliers de l'Empire étaient universellement valables et dignes d'être imitées. L'héritage byzantin de ces pays de l'Europe orientale fut une composante assez importante de leur tradition médiévale pour justifier l'opinion que, à plus d'un titre, ils formèrent une seule communauté internationale »[6].

Par-delà les différences, plutôt apparentes, les similitudes sont une constante. Nicolae Iorga traite le sud-est de l'Europe sous une perspective culturelle unitaire : « Un seul regard sur ce monde du sud-est de l'Europe suffirait pour révéler combien toutes ces maisons sont apparentées par leur origine, combien elles sont liées entre elles par leur développement et combien elles sont solidaires dans leur situation présente. [...] Un village roumain, un village serbe, un village bulgare, un village de la Thrace, à l'exception des territoires près de la mer [...] sont identiques : les mêmes rues, le même allignement des habitations, les mêmes proportions entre la maison, le verger, le potager, et le même jardin fleuri, arrangé, le plus souvent, dans la gallerie ou derrière les fenêtres [...] ; la modeste maison du paysan, avec son toit de chaume ou de bardeaux, avec sa balustrade aux poteaux sculptés, avec sa gallerie aérée d'en face et sa division intérieure identique : la pièce centrale, avec le foyer qui réchauffe les deux pièces voisines, la chambre habitée à gauche, une autre chambre, beaucoup plus large, à droite, celle que les Roumains appellent "la grande maison", "le salon", et qui est destinée aux hôtes ou au visiteurs. L'arrangement intérieur est identique, l'ameublement l'est aussi »[7].

Paschalis M. Kitromilides n'est pas lui non plus d'accord avec ce concept de mentalité balkanique, considérant qu'il serait le produit de stéréotypes, et donc une réduction nuisible : - Existe-t-il une mentalité balkanique commune ?... La réponse pourrait être affirmative pour ceux qui ont l'habitude de présenter les Balkans à l'aide de stéréotypes conventionnels et qui, par conséquent, mettent le signe d'égalité entre une supposée "mentalité balkanique" et le caractère passionnel, l'état de désordre et le sentiment de chaos associés à cette région du monde – autant d'éléments censés différencier le sud-est de l'Europe et les normes de la vie civilisée de l'Europe du nord-ouest... »[8]. Tous les arguments anthropologiques et psychosociaux en faveur de l'existence d'une « mentalité balkanique » reconnue tendent à se transformer en métaphysique sociale, à moins d'offrir des réponses convaincantes à la question portant sur le spécifique balkanique. Kitromilides soutient ainsi l'incompatibilité entre la catégorie « mentalité balkanique » et toute structure ethnique et nationale. En revanche, il développe le concept de « structures mentales et d'attitude » dans un contexte strictement historique, spécifique. Il s'agit d'un ensemble de caractéristiques des mentalités, distinct et historiquement plausible, valable pour l'oikoumenê orthodoxe des Balkans du XVIIIe siècle : aussi la spécificité historique est-elle le facteur critique dans la description d'une pareille série de présupposés et de normes récurrentes et pénétrantes, qui définissent l'image d'une collectivité. Parler avec insistance d'une uniformité diachronique nommée « mentalité balkanique », c'est lancer une légende non vérifiée historiquement, susceptible de se transformer en une mythologie fallacieuse[9]. « Une mentalité balkanique commune devient une impossibilité logique évidente dès qu'elle est rattachée causalement à tant d'identités ethniques divergentes, le plus souvent antagoniques et s'excluant mutuellement »[10].

Mais nous ne pouvons limiter nos observations et « simplifications » à l'oikoumenê orthodoxe ou aux différences ethniques, comme le suggère Kitromilides, car souvent l'élément islamique, représenté surtout par la Turquie, en tant que générateur d'influences profondes sur les mentalités régionales, mais aussi par des communautés musulmanes, plus ou moins petites, résidant dans cette partie du monde, entretient une altérité qui fournit ou alimente des éléments syncrétiques, qu'il s'agisse ou non de zones de contact direct. Malgré la différence majeure que nous venons d'évoquer, on peut mettre en évidence, non seulement aujourd'hui, mais aussi à l'époque « d'or » où ces bases communes se sont consolidées, une certaine sympathie, une certaine compréhension d'Autrui, de l'Autre, même par une religion différente et en dépit des hostilités bruyantes de la politique officielle, laïque ou religieuse. C'est ce qui explique la présence, dans le vécu quotidien, de la musique et de la gastronomie, des vêtements et des tissus ou des accessoires spécifiques, des institutions sociales (le café), etc., venus par des canaux jamais fermés, qui permettaient et acceptaient avec curiosité, puis avec joie, toutes ces

extravagances. Un autre argument d'une attitude commune est engendré par l'occupation commune (byzantine, ottomane) sous laquelle se trouvèrent ces populations, ce qui généra des protestations semblables contre les dirigeants étrangers ou locaux, mais ayant emprunté les manières des premiers. Kitromilides en arrivait donc à cette conclusion que la seule solution qui s'imposerait serait une approche anthropologique, dans « une tentative pour récupérer les valeurs communes et les croyances, telles que manifestées dans les comportements et les formes d'expression symboliques originaires »[11].

En fait, il nous faut tenir compte de deux niveaux distincts auxquels on peut observer ces différences :

– celui de la société des gens simples, des sujets, des commerçants, des artisans, des paysans, marquée par les plus profondes influences, provenant de périodes différentes mais se prolongeant jusqu'aux premières décennies du XXe siècle et continuant même aujourd'hui, sous des formes nouvelles (le fait que les nouveaux petits commerçant vont à Instanbul pour en ramener des marchandises entretient encore ce goût de l'exotique et du familier, de l'intimité, jamais disparu dans beaucoup des pays de la région) ;

– celui de l'aristocratie locale qui, pendant l'occupation étrangère (ottomane, phanariote) emprunta aux occupants beaucoup des formes du faste oriental. Il est intéressant de remarquer que toutes ces formes, jadis aristocratiques, se transmirent, de haut en bas, jusqu'aux classes inférieures, qui les conserva comme autant de marques de l'aristocratie, tâchant de se les approprier dans une mesure aussi grande que possible. C'est ce qui explique la présence d'objets vestimentaires et d'ornement, de la musique aux influences turques, des tapis à dessins géométriques ou animaliers, de même source, mais surtout des emprunts gastronomiques.

Svetlozar Igov offre, quant à lui, une autre perspective sur la mentalité commune des gens des Balkans. Dans son étude *Homo balcanicus: kărstopătniat čovek* [12] (Homo balcanicus : l'homme du carrefour), il met en évidence trois types de mentalité balkanique, selon l'appartenance géographique et la nature des occupations traditionnelles dominantes (les distinctions ne tiennent pas compte des diffé-rences religieuses qui permettent d'identifier une Balcania Orthodoxa, englobant les Bulgares, les Grecs, les Serbes, les Monténégrins, les Roumains, et une Balcanie Romana, formée de Slovènes et de Croates) :

a) le type balkanique de base, montagnard, incluant les Albanais, les Bulgares, les Serbes, les Monténégrins, une grande partie des Roumains, auxquels vient s'ajouter la population musulmane. En général, il dispose d'une culture agraire ou pastorale, conservatrice, d'habitude pacifique, au sein de laquelle peuvent prendre naissance des groupes guerriers pour défendre la liberté ;

b) le type méridional, incluant les Grecs et les Croates de la Dalmatie. Ce type de culture hérite la culture antique de la polis, de la navigation et du commerce ;

c) le type pannonien-danubien (les descendants de l'empire des Habsbourg) incluait les Croates continentaux, les Slovènes, les Roumains de la Transylvanie et les Serbes de la Vojvodine. Il s'agit primitivement d'une culture féodal-agraire, devenue petit à petit une culture urbaine de type bourgeois.

Une autre caractérisation intéressante des Balkaniques en général appartient au chercheur bulgare Bogdan Bogdanov, qui saisit plusieurs éléments d'attitude, tant domestique que « de surface », construite pour imposer à un « adversaire » européen, lequel ne s'en est guère formé une opinion positive : « À la générosité orgueilleuse vient s'ajouter, de façon complexe, l'indifférence affichée pour l'argent et les choses matérielles. Ainsi, l'homme balkanique est économe, travailleurs et prudent, pressé qu'il est par la nécessité de stocker des aliments, de construire sa maison – forteresse solide et stable, qui le défend contre les incertitudes du monde extérieur. Par conséquent, le Balkanique est très pratique chez lui. Mais, une fois qu'il se retrouve à l'extérieur de son foyer, il est dépensier, il a un comportement festif et bohème, à mille lieues de ce qu'il est en réalité »[13]. L'individualisme, mais aussi le sentiment de l'orgueil personnel et national sont autant de traits que mettent en

évidence, tout en en soulignant le côté négatif, les observateurs européens occidentaux : « A la base de l'amour-propre balkanique se trouve l'individualisme spécifique, issu sans doute de l'ancienne instabilité nationale et de l'occupation étrangère. Là-bas, la seule autorité fiable est l'individu, et non la communauté. Telles sont les pensées inavouées de l'homme balkanique, même si, souvent, celui-ci parle de sa patrie à laquelle il se prétend profondément attaché. Dans le Nord, l'individualisme est beaucoup plus accentué, et la défiance se manifeste non seulement à l'égard de l'État, mais aussi à l'égard de ceux qui vivent au loin. La principale préoccupation individuelle, c'est le foyer, sous ses différents aspects. Au village, la maison peut ne pas être crépie à l'extérieur, alors que, à la ville, on voit se manifester l'amour-propre de l'image extérieure... »[14] Enfin, un autre trait dominant dans tous les pays de la région, héritage « précieux » et toujours actuel de la domination ottomane et phanariote : le maintien et le développement de relations de clan, de parenté, etc. très étroites, pour contrecarrer dans une certaine mesure l'imprévisible du pouvoir officiel : « L'"esprit local" et les rapports de clientèle ou le népotisme sont, en égale mesure, me semble-t-il, l'expression de cet individualisme. La suspicion à l'égard du pouvoir central et l'insistance avec laquelle on favorise ses parents et ses proches sont étroitement liées entre elles et déterminent l'instabilité de la communauté et de la hiérarchie »[15].

Toutes ces délimitations sont à accepter avec réserve. Ce sont, en fin de compte, des abstractions plus ou moins spéculatives, qui essaient de simplifier à l'extrême ce qui constitue, en fait, une multitude de traits formant un peuple ou un autre. Nous sommes marqués par le même subjectivisme, que nous parlions du réductionnisme des stéréotypes ou de l'abstraction anthropologique. Plus encore, toutes les appréciations ne s'appliquent pas à tous les individus analysés. « Lorsqu'on en vient à caractériser tout un peuple ou un ensemble de peuples (et l'Occident est un ensemble pareil), les différents représentants de ces peuples se sentent directement visés. Ils commettent une erreur logique grave en transférant sur eux-mêmes ce que l'on dit de peuples entiers, ou de grands ensembles humains qui se reproduisent au long de plusieurs générations. Un peuple n'est pas seulement une somme d'individus identiques. Le peuple est une unité d'individus différents, un phénomène unitaire. Au sein de chaque peuple, on peut voir tous les types humains possibles »[16].

« Le balkanisme est une réalité devenue mentalité, et la Balkanie est un mythe »[17] dont les traits spécifiques sont : la dichotomie entre la réalité quotidienne des petits peuples des Balkans et l'utopie, l'idéalisme ; l'oscillation continuelle de la psyché individuelle et collective entre la vie concrète, prosaïque, avec ses vicissitudes, ses difficultés et ses monstruosités, et les aspirations supérieures, élevées[18]. Notre étude se propose d'identifier et de souligner ces similitudes qui configurent la mentalité balkanique typique, dont l'existence ne fait aucun doute et qui, individualisant n'importe quel habitant de la péninsule, le place dans le contexte européen et universel, de même que son promoteur, l'homo balcanicus. Pour Victor Papacostea, « Homo balcanicus, l'homme de la péninsule Balkanique – de n'importe quelle région de la péninsule – participe, dans le fond, par sa structure ethnique, mentale et spirituelle, à plusieurs nationalités. Sans nier, loin de là, la différence spécifique qui le relie à la totalité des membres de la nation au sein de laquelle il est né et dont il parle la langue, nous constaterons cependant que, en plus, il est aussi membre, par des liens organiques, venant d'une complexe et longue ascendance, de la grande communauté balkanique »[19]. Si le Commonwealth byzantin a donné naissance au byzantinisme, celui d'après Byzance a produit les influences turque et grecque, et au siècle des nations le balkanisme est apparu[20]. La même idée de plurilinguisme et, plus encore, d'appartenance à une façon d'être propre aux Balkaniques a été surprise par Marianne Mesnil : « Sur un territoire où, dès les temps les plus reculés, la fluidité des frontières est une règle, et le multilinguisme une pratique, un tel homo balkanicus habitué à entrer en contact avec les nations les plus diverses (dans le sens médiéval du terme : des étrangers, nés

en un seul lieu) connaît mieux que personne l'art d'entretenir des relations avec "les autres", dont il a souvent appris les langues et dont il respecte la religion, s'il ne la partage pas. Ainsi nous avons affaire à une sorte de "caméléonisme" de l'homo balkanicus, qui consiste précisément en cette capacité qu'il a de gérer des relations multi-ethniques, multilinguistiques, multiconfessionnelles – tandis qu'il adapte en quelque sorte sa propre "identité" à celle de l'autre et qu'il lui attribue une dimension rationnelle, négociable »[21].

N'oublions d'autre part pas que, en général, le balkanisme est un discours qui stigmatise et à travers lequel cette partie de l'Europe est opposé à l'Occident civilisé. Malgré des origines plus récentes, même les Grecs d'aujourd'hui ont du mal à faire reconnaître leur européité – alors que l'ancienne Grèce est considérée comme le berceau de la civilisation ! – et passent pour des Balkaniques au « visage européen ». Dans de telles conditions, qui voudrait assumer son appartenance à ce type de mentalité ? C'est pour cette raison que les nations nouvellement créées ont essayé (et ce processus dura des siècles) de se débarrasser de l'image des Balkans non civilisés. Le processus de constitution nationale et d'autodétermination fut imposé par les élites culturelles, sur les modèles traditionnels occidentaux (émancipation, souveraineté politique et authenticité culturelle, droit national de participer à l'histoire, dignité nationale et désir de reconnaissance internationale, etc.). Cependant, comme il s'agissait d'États petits et périphériques, ces nations se laissèrent prendre au jeu contradictoire entre le normatif et le factuel : entre l'impératif moderne (la nation doit être une agence historique de sa propre émancipation) et leur insignifiance dans les combats entre les Grandes Puissances. Internalisant tant le trauma émotionnel de la non reconnaissance (invisibilité publique et historique), que le trauma moral (leur échec dans l'accomplissement de leur destinée historique), les idéologies et les cultures des nations du sud-est de l'Europe ont toujours affiché un souci obsessionnel. Elles ont essayé de compenser leur insignifiance géoculturelle par des représentations de soi. De la sorte, elles ont reproduit indéfiniment l'image idéologique de leur authenticité et la différence par rapport à leurs voisins[22]. Tous ces efforts de différenciation, destinés à produire des politiques nationales distinctes de représentation (institutionnelle, politique, militaire) se sont heurtés à l'inflexibilité de la notion occidentale de balkanisme, qui occultait les différences et percevait cette région dans une perspective macro-coloniale. Malgré l'existence de spécialistes prestigieux, de chercheurs, de diplomates, de journalistes qui ont saisi ces différences, les médias occidentaux ont continué de produire l'image d'un ensemble obscur du point de vue géopolitique et culturel, inutilement fragmenté, où des tribus minuscules, non reconnues, et de petits États agressifs mettaient en scène, en miniature, des drames que les Européens avaient depuis longtemps oubliés : haine réciproque, guerres sauvages sous le signe de nationalismes histériques ou idiosyncrasiques, oppression culturelle, purification ethnique. En 1921, le journaliste Paul Scott Mowrer offrait la première image complète du phénomène de la balkanisation, en saisissant des traits qui, aujourd'hui encore, marquent la mentalité occidentale : « La création, dans une région de races métissées sans espoir, d'un mélange de petits États, avec des populations plus ou moins arriérées, faibles du point de vue économique et financier, avides, intrigantes, épouvantées, une proie idéale pour les machinations des grandes puissances et pour les impulsions violentes, dues à leurs propres passions »[23].

En effet, le spécifique de l'Europe de l'Est par rapport à l'Europe occidentale réside moins dans le fait que les frontières d'État ne coïncident pas avec les frontières ethniques (parce que cela existe aussi en Occident), que dans le caractère extrêmement récent et fragile de ces frontières. Et la déstabilisation des Balkans n'est pas provoquée par la diversité ethnique ou culturelle, mais par la crise, surtout politique, sociale et économique[24].

NOTES :

[3] Andrzej Stasiuk, *Jurnal de bord* [Journal de bord], dans le vol. Iuri Andruhovîci, Andrzej Stasiuk, *Europa mea* [Mon Europe], Ed. Polirom, Iaşi, 2003, p. 117.

[4] En parlant de l'Empire ottoman, par exemple, les historiens soulignent les grandes différences régionales – notamment en Bosnie, Roumélie et en Afrique du nord, soit dans le domaine de l'agriculture, soit quant à la façon dont chaque jeune État national a accepté l'héritage ottoman.

[5] Il convient de retenir que c'est le savant roumain Victor Papacostea qui a, le premier, jeté les bases de l'étude systématique de la vie des peuples des Balkans, notamment par l'intermédiaire de l'Institut d'études et de recherches balkaniques, qu'il a fondé en 1937. L'Institut édita même une revue internationale, « Balcania », où furent énoncés les principes de la balkanologie.

[6] Dmitri Obolenski, *Un commonwealth medieval: Bizanţul. Europa de Răsărit. 500-1453* [Un commonwealth médiéval : Byzance. L'Europe de l'Est, 500-1453], Ed. Corint, Bucureşti, 2002, p. 9.

[7] Nicolae Iorga, *Le caractère commun des institutions du sud-est européen*, Paris, 1929, pp. 3-7.

[8] Paschalis M. Kitromilides, *„Mentalitate balcanică" – istorie, legendă, imaginaţie*, [« Mentalité balkanique » – histoire, légende, imagination], dans le vol. *Balcanismul* [Le Balkanisme], „Secolul 20" [Le XXe siècle], nr. 7-9, 1997, p. 76.

[9] *Apud* Maria Todorova, *Balcanii şi balcanismul* [Les Balkans et le balkanisme], Humanitas, Bucureşti, 2000, p. 283.

[10] Paschalis M. Kitromilides, *op.cit.*, p. 79.

[11] *Idem*, p. 80.

[12] Dans le vol. Gheorghi Dimov (ed.), *Literaturno-estetičeski procesi na Balkanite*, Sofia, 1994, p. 54.

[13] Bogdan Bogdanov, *Homo balkanicus*, dans le vol. *Balcanismul* [Le Balkanisme], „Secolul 20" [Le XXe siècle], nr. 7-9, 1997, p. 72.

[14] *Idem*, pp. 72-73.

[15] *Ibidem*, p. 73.

[16] Alexander Zinoviev, *Occidentul. Fenomenul occidentalismului* [L'Occident. Le phénomène de l'occidentalisme], Ed. Vremea, Bucureşti, 2002, pp. 50-51.

[17] Constantin Geambaşu, *Homo balcanicus*, dans le vol. *Ipostaze lirice şi narative* [Hypostases lyriques et narratives], Ed. Medro, Bucureşti, 1999, p. 139.

[18] *Idem*, p. 142.

[19] Victor Papacostea, *Balcanologia* [La balkanologie], dans le vol. *Sud-Estul şi contextul european* [Le Sud-Est et le contexte européen], VI, 1996, p. 71.

[20] Alexandru Duţu, *Y a-t-il une Europe Orthodoxe?*, dans le vol. *Sud-Estul şi contextul european, VII, Cultură şi solidarităţi în „Europa ortodoxă"*, [Le Sud-Est et le contexte européen, VII, Culture et solidarités dans l'"Europe orthodoxe"] Bucureşti, 1997, p. 17.

[21] Marianne Mesnil, *Kosovo 1999: explozia întârziată*, dans le vol. *Balcani după Balcani [Les Balkans après les Balkans]*, Ed. Paideia, Bucureşti, 2000, pp. 35-36.

[22] Aleksander Kiossev, *The Dark Intimacy: Maps, Identities, Acts of Identification*, dans le vol. Bjelić, Dušan I., Savić, Obrad (ed.), *Balkan as Metaphor. Between Globalization and Fragmentation*, Cambridge, Londra, 2002, p. 180.

[23] Paul Scott Mowrer, *Balkanized Europe: A Study in Political Analysis and Reconstruction*, *apud* Maria Todorova, *op. cit.*, p. 63.

[24] Dominique Belkis, *Ethnicité et nation dans les Balkans (1)*, dans *Regard sur les Europes: une anthropologie impliquée dans les Balkans*, nr. special de L'ARA (Association Rhône-Alpes d'Anthropologie), nr. 44/1999, pp. 24, 25.

Premises of the Establishment of the Warsaw Pact. Issues Related to Security on the European Continent

Laurențiu-Cristian Dumitru

1. *International Political and Military Environment of the Establishment of the Warsaw Pact*

The major changes that occurred at European geo-political level and in the international arena after the end of the second world conflagration, manifested in the dynamics of the development of the Cold War, concurred and had a determinant role in the formation of the two representative opposite political and military blocs, namely NATO and the Warsaw Treaty[1].

The Western perception of a hostile and even aggressive Soviet Union, from the end of the war, had its origins in Moscow's behavior in the international relationship from that period. The Red Army was present in Central and South-Eastern Europe and under its occupancy of the states in the area, a material modification of their political and economical system was foreseen, in accordance with the Soviet communist totalitarian pattern[2].

Moreover, Stalin was firmly convinced of the fact that further to the war, the victorious armies should export their own political system in the conquered territories[3].

During the first period of the Cold War, the geo-political approach, closely related to the ideological one, predominated the Soviet foreign policy in its security relationship with the West, on the European continent. The Marxist and Leninist principles had a defining role in forming the perception of the Soviet decision-makers in relation to the political actions being taken by the Western countries.

In this sense, Molotov recalled the fact that the extension of socialism eliminated the traditional isolation of the Soviet Union while the emergence of states being ruled under popular democracy principles at its Western borders eliminated the dangerous possibility of creating, by the Westerns, of a new "sanitary belt", obviously directed against Moscow[4].

During the attaining of foreign policy objectives and implicitly those related to security, the Soviets' error of perception as to the relationship established between Western states generated a vicious circle existing between the perception and elaboration of the political strategy in this sense.

In his relationship with the West, Stalin was driven by a deep mistrust as to the behavior of Western countries, by megalomania and in addition, showed a strong "persecution mania" with reference to his person and implicitly the Soviet state. As stated by the American Professor Vojtech Mastny, Stalin identified the security of the Soviet state with his personal power and any offence brought to the Soviet Union was considered as a personal offence[5].

As part of the national security paradigm of the Soviet Union, the perception and sensitive approach in the relationship with the Western states were exaggerated. The post-war security plans for the European continent showed that Stalin's vision, aimed to achieve a tangible and pragmatic security, reduced itself to the old concept of geographical security[6]. Stalin preferred the traditional international system of power balance and division on spheres of influence which did not exclude a certain positive attitude as to a "specific" collective security which was to be found in the system of bilateral treaties, concluded even with the

Western countries and among themselves, as well. The main issue consisted of impeding the reconstruction of the economical and military potential in Germany intended as a premise for the re-birth of the German militarism[7]. In their relationship with fellow countries, the bilateral treaties played a major role for their control. As far as their relationship with West-European countries, Stalin preferred such treaties stating as a premise the American non-implication on the European continent. In this sense, the Dunkirk Treaty, concluded on March 4, 1947, between United Kingdom and France received a positive perception, however, its mere conclusion gave birth to queries as to the future in Moscow[8].

On the other hand, Western Europe, that had hardly ended war, showed a strong economical and political instability that could constitute a most important premise for communist actions meant to give rise to unstable situations. Such a hypothesis could become real in the event of withdrawing the American troops from the continent. United States elaborated, based on their own perception, a coherent policy valid for the future in order to counteract everything that was considered as the Soviet (communist) danger[9]. To maintain the American forces in Europe constituted the major imperative in order to discourage possible Soviet military aggressions, while Washington started in that context political, economical and military measures meant to neutralize the Soviet subversive actions, both on the European continent and at worldwide level.

The adoption of "Truman doctrine" in March 1947, when the United States openly expressed their support for Greece and Turkey, under the menace of the communist subversion and undertook to grant assistance to any state that might oppose it, represented in fact the formal involvement of the United States in issues related to security on the European continent[10].

On June 5, 1947, General George C. Marshall, the US Secretary of State, proposed the American economical and financial aid to Europe, the United States launching thus a huge program of economical recovery for the European countries, which was, as a matter of fact, open to the countries under the Soviet influence and rejected, however, by Stalin, who considered it as a tentative to undermine the "strategic glacis" accomplished by the Soviets in Central and Eastern Europe[11].

The American aid was conditioned by the acceptance of continent reconstruction and institutionalization of European economical structures. As an answer to the American requests, a conference was held during June 27 - April 16, 1948, which was finalized by the conclusion of the Convention establishing the Organization for European Economical Cooperation[12].

The elaboration and coherent application by the American decision-makers of the doctrine on "containment" made possible a real geo-political "enclosure" of the Soviet Union. Such "containment" of the Soviet Union asked for a policy at global level where the stop of the communist ascent in Europe constituted only one segment, while it was essential to prohibit it and further on the Soviet-Chinese bloc to go beyond the geo-political perimeter it already held[13]. The application of such a policy constituted a constant approach of the US diplomacy under the dynamics of the evolution of the Cold War.

The establishment of Cominform in September 1947, in Szklarska Poreba in Poland and the conclusion of bilateral treaties with the popular democracies, and also with Finland, during the year 1948, led to a deepening of the contradictions manifested by the bi-polarity of the power balance on the European continent[14]. The Soviets, however, did not want to appear in the eyes of the public opinion as "champions" of the formation of political blocs. During a congress of the University members organized in Moscow on March 27, 1948 to discuss the issues related to Slavic studies, Zhdanov – although recognizing that the process of getting nearer the Slavic people was in full development – stated that "there is no need to strengthen this right now, we should leave to the Americans themselves the forefront of unification and forming blocs"[15].

The ideologist of the Soviet communist regime stated, which was representative for the Soviet perception and mentality, that the

United States inspired obvious tendencies of European integration, being the foundation of Western alliances and the promoter of the anti-Soviet bloc. In Zhdanov's idea, the political behavior of the United States indicated the American expansionism in Europe"[16].

On such a background, on March 17, 1948, in Brussels, the United Kingdom, France, Belgium, the Netherlands and Luxembourg signed the Brussels Treaty, constituting the Western Union. The treaty provided for the establishment of a joint general staff, located in Fontainebleau (Paris), a permanent committee in London and a plan for the integration of the military forces of the signatory states, laying thus the foundation of the first organization for collective defense in Western Europe[17].

Under such circumstances, the US Senate adopted, on June 11, 1948, the resolution submitted by Senator Vandenberg, authorizing the US Government to conclude an alliance during a period of peace. Consequently, the negotiations between the United States, Canada, Norway, Denmark, Iceland, Portugal, Italy and the five states being signatories of the Brussels Treaty led to the signature, on April 4, 1949, of the Washington Treaty constituting the basis for the North Atlantic Alliance[18].

The creation of the Western Union was perceived as an instrument carried out under American leadership and having an anti-Soviet character, although not explicitly defined, which based on the provisions under Article 4, whereby the contracting parties undertook to provide military aid in the event of an armed attack in Europe, all but strengthened in the Soviet leadership their conviction on their own perception[19]. As a matter of fact, in the Soviet opinion, the Washington Treaty "derived" from the Brussels Treaty.

At the beginning, the decision-makers in Moscow were not extremely worried by the creation of the North Atlantic Alliance. In accordance with Stalin's ideological approach, the information received by him in relation to the limited military capabilities of NATO and the inherent difficulties encountered by the alliance on its setting-up strengthened his conviction that the West was confronting with "a general crisis of capitalism"[20].

However, a major irritation was produced in Moscow by the joining NATO of Norway and Italy. In the case of the former, the Soviets had made definite proposals to conclude a bilateral treaty at the beginning of 1949, aiming to prevent the adhesion of that state to Western security bodies, most of all that the Scandinavians had expressed their wish to accede to a Northern collective security organization, responding thus to the previous Soviet apprehension in relation to the collective security in post-war Europe, founded on the system of bilateral treaties. The fact that Norway's joining NATO opened the perspective of locating military bases on the territory of a state having a common border with the Soviet Union determined the Soviet leadership to address a protest to the Norwegian Government, a measure that remained without any effects at practical level[21].

Italy's joining the North Atlantic Alliance determined the Soviet Government to address a Note of Protest to the Italian Government on July 19, 1949. Italy affiliation to NATO and the US military assistance provided to the Italian armed forces were perceived by the Soviet leadership not only as an infringement of the military clauses of the Peace Treaty concluded with Italy but also as an evident proof of the aggressive intentions of the Alliance[22].

Nevertheless, the Soviets did not correctly caught the significance of the American concept on security on the European continent. In the acceptance of the decision-making structures in Washington, security of the Western Europe was determined by the interconnection and interdependence of the economical reconstruction to the support of the incipient processes of integration and assurance of a viable European and Atlantic political and military alliance necessary to implement the collective defense[23].

Even from the formation of NATO, the conviction was reached in Moscow that such a process represented the next step towards the revitalization of Western Germany, further to the adoption of the "Bonn Fundamental Law", on May 23, 1949 and its establishment as a state on September 7, 1949[24]. The reproaches addressed to the Western people aimed, in

Kremlin's vision, at aspects that infringed the provisions of the United Nations Charter, of the agreements reached by the great powers winning over Germany and the bilateral treaties concluded by the Soviet Union with United Kingdom and France during the war.

The Soviet perception over NATO as an element of threat at geo-political level was directed towards the assertion in accordance to which the North Atlantic Alliance would concur to the increase of the economical and military potential of Western Germany and would transform it in a basis of American and British aggression[25].

As stated by the American historian Lawrence S. Kaplan, further to its creation, NATO was definitely related to Germany[26]. Moscow considered that the re-birth of the German militarism constituted the major threat on the European continent and at the same time it was the main problem of the European security. As a matter of fact, the Schumann and Pleven plans were perceived in this sense. Under such circumstances, the Treaty on the relationship between the three powers (United States, United Kingdom and France) and the Federal Republic of Germany was signed in Bonn, on May 26, 1952, becoming also a common Treaty whereby the occupation regime came to an end[27].

Continuing this process, the West European states, supported by the United States, requested to West Germany to participate in a system of common defense and security. As a consequence, the representatives of France, Italy, Federal Republic of Germany, Belgium, the Netherlands and Luxembourg signed in Paris, on May 27, 1952, the Treaty on the establishment of the European Defensive Community. Although the British Government denied the participation in the said treaty, it undertook to maintain in Germany four motorized divisions and a significant air force. The project failed, however, being rejected by the National Assembly of France, on August 30, 1954[28].

At the beginning of the '50s, the remilitarization of West Germany, its economical recovery, its participation to the Economical Community of Coal and Steel (ECCS)[29] as well as the development of political and military relationship with NATO constituted a constant concern and received utmost attention from the Soviet diplomacy.

The substantiation of the security concept in Kremlin's vision, wherefrom the ideological approach was not missing, as stated by the American professor Barry Buzan, showed several specific aspects. Although Soviet Union did not have, from the military point of view, the characteristics of a weak state, there was no doubt that all the other European communist states could be included in that category. In the classical and real terms of power acquisition, being the foundation of the political and military approach aimed to establish a military alliance, it would have been normal that the popular democracies be directly interested in implementing such an alliance, aiming to strengthen their military potential, as a pre-condition for the achievement of their security[30].

In practice, however, the Soviet Union was the one that initiated and achieved the military organization of the Warsaw Treaty, as a foundation to counteract to the military threat represented in its opinion by the Western alliances, being identified by Kremlin as an instrument to exercise their control on the satellite states and less as a means to strengthen their military capabilities, however, having a definite finality namely to enhance the Soviet military potential which was considered to guarantee its state's security[31].

The outbreak of the war in Korea, in 1950, had a major impact in redefining the attitude adopted by the two super-powers as to their own allies in Europe. As for the United States, that event had direct implications on the development of NATO military capabilities and Germany's remilitarization and absorption to the West side. While for the Soviet Union, if until then it promoted a number of offensive and defensive policies in its relationship with NATO, at the beginning of 1951 it started practical counter-measures, most of all military ones. Moscow could not miss such an opportunity to broaden its authority at military level over its sphere of influence[32].

During January 9-12, 1951, Stalin called for a meeting in Kremlin the political and

military leaders of the satellite states where he made an analysis of the international situation against the background of the war taking place in Korea (on January 4, 1951, the Chinese and North Korean armies had occupied Seoul), formulating conclusions and establishing precise tasks and deadlines for his European "allies"[33]. To represent Romania were Gheorghe Gheorghiu-Dej, Vice-president of the Council of Ministers and Emil Bodnăraş, the Minister of Armed Forces.

During the said meeting, that had an "unofficial and strictly classified" character, as expressed by Stalin, he presented a speech considering the United States as being not prepared for the war, being "linked" to Asia for two or three years more while China had already a better army than the other popular democracy countries, which fact was considered as alarming, to a certain extent. Taking that into account, the Soviet leader established the following: "you must create, in the following two or three years, modern and strong armies in the popular democracy countries which at the end of this three-years period should be absolutely ready to fight"[34]. In order to stress the firmness of that decision he even stated that "during these three years you must not work, you must only arm yourselves"[35].

During the meeting it was found out that "none of the popular democracy countries is prepared today to face the requirements of a war, the armed forces training level is almost identical in each country and such training has been done so far, in terms of organization and equipment, based on plans being not coordinated among the countries"[36]. As a consequence, an adequate equipment was decided following a "coordinated plan" and setting up the effective forces during peace and war times for the armies in the popular democratic countries, providing aviation with jet fighters (MIG-15) and bombers, allocation of communication and radio-location technique and others. An overall number of 1,400,000 of military was decided for the time of peace and 3,000,000 for the time of war. The following figures were allocated to Romania: 250,000 military during peace time and 600,000 during war the same as each of the following : a division of jet fighters, assault and bomber. The strengthening of the fire strength of the Romanian army was also requested[37]. In this way, the popular democratic countries became a huge market for the armament and military technique of Soviet manufacture.

Also, after reviewing the Report to the Secretariat of the Central Committee of the Romanian Workers' Party, a document prepared by Emil Bodnăraş when coming back from Moscow and endorsed by Gheorghiu-Dej, referring to that meeting, several aspects are to be stressed in relation to its contents.

A Coordination Committee (permanent commission) was formally set up in Moscow, led at Bulganin's proposal and based on the unanimous agreement of the participants, by Marshall A.M.Vasilevski, the Minister of Defense of the Soviet Union, which was in fact a genuine leading body and a predecessor of the Warsaw Treaty[38].

At Stalin's proposal, two permanent representatives from each state participated in the Committee (USSR, Poland, Czechoslovakia, Romania, Hungary and Bulgaria) of which one was a military. At the proposal of Gheorghiu-Dej, the military representative of Romania was appointed in the person of Emil Bodnăraş.

The Rules (statutes) of functioning of that Committee was drafted by Marshall A.M.Vasilevski stipulating that the said Committee was to exclusively deal with equipment issues, being a consultative body, while the decision was to be taken by the respective governments. The Committee members were permanent, the committee electing a president, who was also permanent. Apart from the president, a secretariat of the coordination committee was set up, the said committee meeting on a regular basis, when called by the president[39]. The unanimous adoption of these Rules, in Stalin's presence, established the rule of "consensus", which was anyhow to exist for a long period of time within the political and military relationship established between the popular democracy countries and the Soviet Union[40].

The international events that took place at the respective moment under the dynamics of

the Cold War confirmed the fact that Stalin mistakenly evaluated the situation in Korea, while the UN forces (most of them belong to US) succeeded to free Seoul on March 14, 1951, which tempered to a certain extent the warlike impetus of the Soviet dictator[41].

An analysis of the way in which the new "popular" armies of the states under the Soviet sphere of influence were created, shows that the political and military alliance within the Warsaw Pact was established after the pattern of the "Soviet military science" on principles of functioning, doctrine, organization, training and equipment was implemented based on the "brotherly aid" received from the Soviet Union.

As a matter of fact, during the 2nd Congress of the Romanian Workers' Party that was held during December 23-28, 1955, Emil Bodnăraş stated that "both in the organization and equipment of our army forces we received the brotherly aid from the Great Soviet Union. The Soviet Army, being the most advanced military organization of our time, served us as a model"[42].

After Stalin's death, the environment of international relationship on the European continent developed towards a relative détente. The foreign policy measures taken by the Soviet Union which were determined by the promotion of the principle of a peaceful co-existence, led to new approaches determined by the conduct of the Soviet leaders in the arena of international affairs.

The efforts made by the Western states to develop viable security capacities as well as the accession of West Germany to WEU (Western European Union) and further on to the North Atlantic Alliance would generate a political, military and diplomatic conduct that was specific to the Soviet Union and finally leading to the creation of the Warsaw Pact in May 1955.

2. *Considerations on the Soviet Political Decision to Establish the Warsaw Pact*

The establishment of the Warsaw Treaty constituted an obvious expression of the Cold War being manifested on the European continent, divided in two antagonistic systems from the social, economical, political and military point of view. On a first analysis, the Treaty may be considered as a replication to the creation of NATO, especially after the accession of the Federal Republic of Germany to the said alliance while its political and military connotations converge towards the materialization of Moscow's decision to subordinate, in an institutionalized manner, the military potential of the states having signed the Treaty.

Practically, the states in Central and South-Eastern Europe had become communist after 1948, Stalin considering not necessary to establish a super-structure of the type of a political and military alliance to make formal the already existing relations between the Soviet Union and the satellite states, while the Soviets had concluded bilateral treaties with all the popular democracy countries[43].

The beginning of the '50s marked the starting up of an arming process in the satellite states, imposed by Soviet Union in accordance with its own political and military strategy, the emergence of several measures of integration at military level and an increased number of Soviet advisors located in the said states[44]. Romania, making integral part of the European communist system had, during the years of Yugoslavia crisis, two Soviet army corps being disbanded in its territory, with their HQ in Timişoara and Constanţa, the effects of its army forces reaching about 500,000 military during peace time, which was far beyond its needs for defence[45]. Under such circumstances, Romania maintained six divisions in permanent combat state[46].

Playing its indisputable predominant power part in Central and Eastern Europe, the Soviet Union could have dispensed from such military alliance, however, in the opinion of the Soviet leader Nikita S. Khrushchev, the creation of the Warsaw Pact made available to Moscow the means to militarily subordinate the European communist states (except for Yugoslavia) and

offered it the instrument meant to exercise political pressure on the West while preparing and holding future negotiations in order to provide security on the European continent[47].

Moscow decision to establish this organization was decisively influenced by the emergence and multiplication of major changes within the international relationship in Europe.

The first NATO enlargement from 1952, through the accession of Greece and Turkey, established a new geo-political and geo-strategic environment in the South-Eastern part of the continent. The setting up of the common land and maritime border of the Soviet Union with the Southern European flank of the North Atlantic Alliance, at the border with Turkey, generated anxiety to the leading bodies in Moscow, which were concerned to increase the importance of the military institution, a fundamental issue to support the power status of USSR, in their opinion, and an additional proof of the aggressive character of the policy promoted by NATO[48].

While analyzing the political and military background that generated the Soviet decision to establish the Warsaw Treaty, the proposals made by the Soviet government on the accession of the Soviet Union to the North Atlantic Alliance, submitted on March 31, 1954, to the US, British and French governments are to be considered[49]. In accordance with its own concept of collective security in Europe, USSR tried, while considering the case of acceding to the alliance, to change its character, scope and role, making thus inoperative the concept of collective defense, based on which NATO had been created in fact. Becoming aware of the stratagem and aim of such an approach, the three governments in question rejected by a common notice the Soviet proposal, considering it as unrealistic and in flagrant contradiction with the fundamental values promoted and defended by the Alliance. Such a fact all but strengthened the conviction of the leaders in Moscow, being aware of certain drawbacks of the Soviet military system, especially as regards the nuclear weapons, that NATO constituted the major danger for the Soviet totalitarian system set up in its sphere of influence[50].

In Molotov's opinion, the prior Stalinist approach of an ideological nature, in relation to the existence and deepening, as well, of the contradictions between Western states, had to be turned to good account in the interest of the Soviet Union, the practical finality being that to undermine the West and move away Western Europe from the United States. Soviet diplomacy aimed also, through its promoted policy, to create breaches and divide NATO, aiming to stop the accession of the Federal Republic of Germany to the Alliance[51].

The project on European Defensive Community was undesirable as, in the Soviet view, it would have offered a first-rank role to the Western German state. Molotov was firmly convinced that only the collective security, in its Soviet variant, would ensure security on the European continent[52].

The premise the Soviet foreign minister started from proved to be false, the same as the reasoning generated by it.

The failure to set up the European Defensive Community paradoxically imparted an accelerated pace to the measures aimed to implement the European military integration, including the participation of the Federal Republic of Germany. On September 28, 1954, the Conference of the states participating in the Project on the European Defensive Community was held in London, with the attendance of the United Kingdom, United States and Canada, on which occasion an agreement was signed aimed to revitalize the Western German military system. As a consequence, on 19 October 1954, the Conference of the states participating in London previous negotiations began in Paris, during which it was decided to transform the Western Union in the Western European Union, marking thus the inclusion of Italy, as well, in this political and military organization[53].

Based on the signed agreements, the Federal Republic of Germany was granted the right to have a permanent army reaching the effects of 500,000 military, organized as ground, air and naval forces[54].

On October 23, 1954, the North Atlantic Council addressed to the Federal Republic of Germany an invitation to join NATO, deciding also the accession deadline for May 5, 1955[55].

On the same day, in Paris, the nine states participating in the conference signed about 80 documents (agreements) under the name of the Paris Agreements (modified Brussels Treaty) stipulating among other things the accession of Italy and the Federal Republic of Germany to the Western European Union [56].

The issues related to the implementation of a collective security to the detriment of a collective defense in Europe constituted a constant mark of Soviet diplomacy during the entire year 1954. The diplomatic notices addressed by the Soviet government to the US, British and French governments on July 24, September 10 and October 23, 1954, and also the Conference of the Ministers of Foreign Affairs of the four major powers from Berlin on February 10, 1954, had a common mark, namely the conclusion of a European General Treaty on collective security in Europe[57].

The proposals made in the Soviet diplomatic notices brought about irritation and also mistrust in relation to their contents. In this sense, the notice of the French government from May 7, 1954, published in "Scânteia" newspaper, quoting the TASS Press agency was significant, stating among other things that "Europe's and worldwide security may not be strengthened in any way through the destruction of defensive associations of the states sharing common ideas and based on attempts to replace them with new illusive security organizations (...)[58].

The signing of the Paris Agreements produced a visible irritation in Moscow, generating strong political and diplomatic measures from the Soviets. On November 13, 1954, the USSR government (the initiative and concept of that measure was Molotov's, in fact) addressed to the Governments of France, United Kingdom, Austria, Albania, Belgium, Bulgaria, Hungary, the German Democratic Republic, the Netherlands, Luxembourg, Greece, Denmark, Iceland, Italy, Norway, Poland, Romania, Turkey, Finland, Switzerland, Sweden, Yugoslavia and the United States a notice calling in Moscow, on the 29th of November 1954, a Conference of the European countries aimed to assure peace and security in Europe[59].

As foreseeable, the Western states did not answer to the Soviet calling, the said conference being a diplomatic failure, in terms of representation.

Consequently, on the 29th of November 1954, at 15.00 hours, at the site of the Ministry of Foreign Affairs of the USSR, the Conference of the European countries aimed to assure peace and security in Europe was open, with the participation of delegations from the Soviet Union, Polish People's Republic, Romanian People's Republic, Republic of Czechoslovakia, German Democratic Republic, Hungarian People's Republic and the People's Republic of Bulgaria as well as a representative from the People's Republic of China, as observer[60]. The delegation of the Romanian People's Republic was made up by Chivu Stoica – first vice-president of the Council of Ministers, Simion Bughici – minister of the foreign affairs, Grigore Preoteasa – first deputy of the minister of foreign affairs and Ion Rab – the ambassador of Romania in Moscow[61].

The attending delegations unanimously adopted the decision to hold the Conference with the participation of the states whose delegations arrived in Moscow, this conference having a stressed propaganda character[62]. The Conference included three meetings: on the 29th of November, 30th of November and the 1st of December 1954. On December 2, 1954, the ceremony of signing the common declaration took place at Kremlin, in the presence of an important number of political and military personalities from Soviet leadership[63].

The press release issued on the conclusion of the Conference works stated that "the participants in the Conference reviewed in every aspect the situation created in Europe in relation to the signing in Paris of separate agreements by several Western states with reference to West Germany remilitarization and its joining the military groups against the peace-loving countries from Europe. The Conference was held in an atmosphere of cordiality and friendship and made evident the complete unanimity in relation to the measures that would have to be taken in the interest of peace in Europe, in case the Paris Agreements would be ratified"[64].

The obsession of the Soviet Government and especially Molotov's in relation to the issue of West Germany re-arming, of its integration in the North Atlantic Alliance and WEU as well as the establishment of a system of collective security in Europe, became evident even in the Statement made by V.M.Molotov on the 29th of November 1954 before the delegations being present in Moscow.

Although the idea of creating a political and military bloc of the European communist countries was not explicitly stated in the respective statement and in the other Conference documents, the launched message hinted to such a possibility. As stated "from the moment when the re-militarized West Germany is to accede both to the military bloc and the new West European military alliance in the course of establishment (namely the Western European Union – WEU), the aggressive character of the military groups being set up by the United States of America, England and France will intensify to a great extent"[65].

To support his assertion, he added: "Instead of such military groupings whose creation is to lead to a new war, the European states will have to intensify their efforts to organize the collective security in Europe. The establishment of a European collective security system – this is the idea that leads to peace keeping and consolidation in Europe"[66].

The idea of constituting an alliance of the communist states was, for the first time, launched by the Czechoslovak Prime minister Viliam Siroky, suggesting special arrangements of security between his country, Poland and the German Democratic Republic, considering the latter faced the major threat following the latest political and military developments in the West. In order to support the measures of developing their military potential, it was considered as absolutely necessary that, in case of re-establishing the West German armed forces, the Eastern Germany should proceed in the same way. Continuing the political approaches on the same trend, the Parliament members from the three concerned states launched in Prague, on December 30, 1954, an appeal addressed to the National Assembly of France not to ratify the Paris Agreements, obviously relying on a possible repeating of the preceding vote cast by the French Parliament that had rejected the EDC project[67].

The changes that took place in the political and military leadership in Moscow, at the beginning of 1955, namely the replacement of Malenkov with Bulganin and the appointment of Marshall Jukov as Minister of Defense, obviously marked a modification of orientation in Soviet diplomacy, in the sense of rejecting the policy of reconciliation with the West[68].

The development of the negotiations with the three Western powers that won the war on the issues related to the signing of the State Treaty with Austria made evident the existing disagreements and confrontation between the ruling groups from USSR[69].

The hard and inflexible concept promoted by Molotov, in accordance to which the Treaty with Austria had to be strictly related to the settlement of the German issue, providing that in the event of re-arming the West Germany, the Soviet units might re-occupy certain sectors in Austria, was rejected by the Western being considered as unacceptable and endangering the neutrality, independence and sovereignty of Austria[70].

The idea of dealing separately the issues related to the creation of the neutral and independent Austria and the settlement of the German issue, however in total contradiction with Molotov's position, belonged to Khrushchev. His political calculations, in accordance to which through the restoration of a neutral and sovereign Austria an "Anschluss" with West Germany was aimed at and through the retreat of the Soviet troops from that country no geo-political and geo-strategic disadvantage were created, taking into account the fact that the Soviet Union did not prepare and wish a new war, proved to be reasonable[71].

The speedy acceptance by the Soviets of the State Treaty with Austria made the Western rather anxious, in the beginning, their direct communication links between the Federal Republic of Germany and Italy being thus interrupted, further to the retreat of the occupation forces[72].

For the Soviet Union, signing the State Treaty with Austria, on May 15, 1955, meant to

undertake the obligation to retreat the occupation forces from that country and lose the right to keep military forces in Romania and Hungary, forces that ensured in accordance with the provisions under the Peace Treaty from Paris (1947) the communication lines of the Soviet troops stationed in Austria[73]. Nevertheless, further to the establishment of the political and military alliance under the Warsaw Treaty, USSR was able to maintain its troops in the states being members of the Pact.

Although the actions preceding the Conference in Warsaw which was held during May 11-14, 1955, took a period of about four months, consisting of consultations, exchanges of opinion and review of documents to be adopted, the ratification at the end of March of the Paris Agreements and the official accession of the Federal Republic of Germany to NATO, at the beginning of May 1955, generated Soviet counter measures and decisively influenced the Moscow decision to constitute the Warsaw Pact.

Significant for the rather oscillating policy of the leaders in Kremlin is the fact that during a visit made by Khrushchev in Poland, shortly before the Treaty constitution, he looked in mistrust at the military significance of the future alliance, wishing to create a collective security organization in Europe, including the participation of the United States[74].

During the Warsaw Conference, Bulganin explained to his allies that further to WEU creation, the coordination of specific measures was recommended as adopted by the communist countries in addition to the bilateral treaties; however, the newly created political and military alliance would not mean the abandonment of the efforts aimed to assure the collective security in Europe, which aspect was tackled with priority by Khrushchev in the Conference held in Geneva in the summer of 1955[75].

In spite of such declarations, it was the opinion of the leaders in Kremlin that the joining NATO of the Federal Republic of Germany increased and encouraged the militaristic and revanchist tendencies of the Western German state, making thus possible a favorable atmosphere so as to contest the political and territorial framework established in Europe at the end of the WW II[76]. That point of view was also shared by the leaders of Poland and Czechoslovakia due to the fact that the Federal Republic of Germany did not recognize their Western borders. In the opinion of the leaders of the German Democratic Republic, the new international position of West Germany as well as the fact that it considered itself to be, by right, the only representative of the German people, was perceived as a serious threat for the Eastern German communist state, created further to the initiative and with the support of the Soviet Union, on the 7th of October 1949[77]. As for the practical measures, the immediate usefulness of the Warsaw Pact was the establishment of the Eastern German armed forces, totally included, unlike the armies of the other member states, in the integrated military structures of the alliance. Based on the position acquired as such, the communist regime in the German Democratic Republic constituted the most devoted member of the Warsaw Pact[78].

The geo-political and geo-strategic importance of the territory of the German Democratic Republic as well as the specific nature of the Soviet and Eastern German bilateral relationship, led to the fact that during the entire existence of the Warsaw Treaty the most important Soviet military presence outside the USSR borders was that stationed in the German Democratic Republic[79].

After a substantial evaluation of the political, diplomatic and military measures taken by the Soviet Union one may reach the conclusion that the decision-makers in Moscow aimed to acquire a more advantageous position in the dynamics of the development of the international relationship through the establishment of the Warsaw Treaty. In close relationship, during the negotiations in Geneva, 1955, on the issues of security on the European continent, taking into account the existence of the Warsaw Pact, Moscow could evoke during those talks the simultaneous annulment of the two opposed political and military blocs[80].

On the long term, through the establishment of the Warsaw Pact, Soviet Union obtained an efficient instrument to promote the political integration of the satellite states, the military alliance being an important auxiliary to keep

them under a rigorous control. From that perspective, the action of the member states in the Treaty (except for Romania) that took place in Czechoslovakia in 1968 most obviously demonstrated such an approach and the promotion, beginning with 1968, of the doctrine of a "limited sovereignty" by Leonid I. Brezhnev, was a consequence of the same fact[81].

The historic perspective makes evident that the Warsaw Pact became a notable presence, during the development of the Cold War, within the international relationship and a distinct actor in the European geo-political field.

Inside the body, as a matter of fact subordinated to Moscow's geo-political and geo-strategic interests, several satellite countries (the case of Romania after 1964) addressed requests aiming to ensure a more democratic manifestation within the decision-making mechanisms of the alliance, which practically remained without any notable outcomes.

NOTES:

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The Fundamental Norms and Principles of the Law of Peace

(I[st] part)

Dumitru Mazilu

The organization of peace, its preservation and consolidation requires a system of principles and norms that constitute – obligatorily – the *spinal column* of peace structure. Being the outcome of millennial experience, these norms and principles have become precise, enriched and developed especially in our contemporary age, enjoying a permanently wider recognition. The necessity of their observance has been often emphasized in earlier times, as well. Nowadays, mainly after World War II, the enactment of a system consisting in norms and principles to assure the enhancement of peaceful interstate relations has represented a priority concern of greatest importance in peace assurance.

§1. The contents of the Law of Peace

An efficient edifice of peace presupposes *durable* structures in order to be able to organize and orientate international relations on the path of peaceful co-operation. Such structures find their expression in the contents, the very substance of the Law of Peace, namely in the norms and principles it relies on. It is justified by the fact that their absence would make impossible the edification of peace and their violation would obstruct the achievement of the world forum's principal attributions and functions: the maintenance of peace and international security. The norms and principles of Law of Peace constitute a *spinal system*, they complete each other, contributing, in their totality, to the organization of a relational system within which peace and co-operation can be assured.

A. The importance of the norms and principles of the Law of Peace

There is no doubt that the positive development of international relations in our contemporary age can be achieved only by observing the legitimate will and interests of peoples. The solid foundation on which there could be built new co-operation relations between States, the *principal factor* able to guarantee the recovery of international atmosphere, the liquidation of insecurity and tension existent between States, consists in the strict observance of each people's inalienable right to solve its own problems, to find its own way to development and the form of social organization with no interference from the outside.

The multilateral development of international co-operation, the assurance of peace and security in the world have as premise the possibility that each people assert freely its national being and personality, enjoy without any constraint all conditions necessary to its economic and social progress, on the grounds of generally acknowledged norms and principles of international law[1]. The statuting of normal interstate relations, the promotion of each nation's legitimate interests, the consolidation of progressive forces all over the world and the diversification of exchanges of material and spiritual values as a means of rising the prosperity of each people are directly conditioned by setting international relations on the grounds of law principles. They are to do away with force and constraint methods, leading to the instauration of the reign of reason, spirit of justice and equity within international life – the only elements meant to govern relations between

States. The peoples of the world assert, in a constant and firm manner, their sincere adhesion to the cause of understanding and co-operation between States, based on the principles of law and pacific coexistence. It has been seen in the observation and application of these principles a *sine qua non* condition for the enhancement of normal relations between countries, the avoidance of interstate conflicts and ridding the peril of a world war. Undoubtedly, international events prove the justice of the policy based on these principles which acquire a permanently larger recognition of States and peoples all over the world.

B. A Complex and Sustained Codification Process

Due to their outstanding importance in the maintenance of peace and international security, the fundamental principles of international law have undergone a complex and sustained *codification* process[2]. It is known that ever since World War II, within conferences dedicated to the edification of an international organization efficient in the maintenance of world peace and security, it has been organized the most remarkable principles of law and justice in the life of the Planet. Over the years, these principles have seen a continuous enrichment and development. The most significant moments of this process are: the 1955 Conference of Bandung, dedicated to the support of general peace and co-operation; the 1957 Cairo Conference of solidarity between African and Asian countries; the 1958 Accra Conference of African countries; the 1961 Belgrade Conference and the 1964 Cairo Conference of non-aligned countries; the 1963 Addis-Abeba Conference of African countries, which adopted the Charter of the African Unity Organization; the Conference on security and co-operation in Europe which adopted in 1975 the Final Act, a document of greatest importance for the settlement of relations based on mutual respect between the countries on our continent; the negotiation and adoption of important documents by the UN General Assembly. We mention, for instance, Resolution no. 1236 (XII) regarding good neighbourly relations between European States belonging to different socio-political systems; Resolution no. 1495 (XV) concerning co-operation between UN member States; Resolution no. 1815 (XVII) on the examination of international law principles regarding friendly relations and co-operation among States, in conformity with the Charter of the United Nations.

Obviously, an extremely significant moment in this codification process has constituted negotiation for a longer period of time as well as the adoption, made in 1970 by the UN General Assembly, of the Declaration on international law principles regarding friendly relations and co-operation between States, according to the Charter of the United Nations. The text of the declaration said, has been elaborated during several years, starting in 1964, within the works of a special committee, made up of 31 States, among which Romania as well.

Lately, within the world organization, it is examined the enhancement and the codification of certain important principles of international law. Therefore, in a special UN Committee it has been approached the issue of increasing the *efficiency* of the principle of renouncing to force and threat by force within international relations. Moreover, the Special Committee for the UN Charter and the increasing role of the organization said, has elaborated the Declaration on regarding the pacific settlement of conflicts between States, as a result to the initiative made in 1979 by Romania. The Declaration has been finalized and adopted by the UN General Assembly within its XXXVIIth session.

C. Analysis on the Contents of Fundamental Principles and Norms of the Law of Peace

The analysis made on the contents of fundamental norms and principles and norms constituting the Law of Peace helps us understand their particular significance in organizing and developing peaceful relations. Such an analysis, furthermore, places emphasis on the role that each and every principle generally plays in the edification of peace, in the systematic and vertebrate structuring process as well as in the global vision of guaranteeing world peace.

a. Renouncing to Force and to Threat by Force Within International Relations

Historical experience, millenniums of strain and armed confrontations, endless wars endured by mankind prove convincingly that renunciation to force and to threat by force, the obligation of States to refrain, within their international relations, from resort to threat by force or to use force either against territorial integrity and the political independence of any State or in any other way not in being in accordance with the aims of the United Nations[3] represent **1.** *the fundamental link* for building peace in the world; **2.** the essential norm of the Law of Peace; **3.** the indispensable norm for guaranteeing the development of pacific relations between peoples. Undoubtedly, world peace can be built only on the solid foundation of justice and truth and not on doubt, strain and insecurity. Renunciation to force and to threat by force, the sanctioning, application and generalization of international law principles within all States, constitute the durable indispensable foundation of new order. Nowadays[4], it is more and more insistently claimed the elementary need that within the relations between States, nations and peoples, the force of law should triumph and old practices based on the "right" of force should be abolished for good.

Renouncing to force and to threat by force represent the fundamental link for building peace in the world, as it is only this way that relations of *trust* can be built between nations. Thus, it can be achieved one of brightest aspirations of peoples: good understanding, pacific development, safe from other peoples interference in one's domestic and foreign affairs. Assuring peace implies: the definitive abandonment of the concept of *the right of the strongest;* the recognition of the equal rights of all – regardless their size, economic or military power – to peace and security. Not resorting to force and threat by force – here including the prohibition to make recourse to armed forces, political, economic or other type of pressure, that is any act implying force – represents a condition for guaranteeing peace and international security, the development and progress of all nations.

The edification of a system of peaceful relations all around the world reflects the hope of peoples to do away with practices and methods based on force, the requirement to exclude the state of doubt and insecurity[5]. The use of force and threat by force within international relations represents the outcome of societies based on social exploitation and national oppression.

The development of humanity, steps taken forward for civilization, during the last decades, outlined more clearly, even in international documents, the imperative need to relinquish force[6] in interstate relations.

Following the tragic experience of World War II, the actions of States with regard to rid any manifestation of force policy and that of threat by force, acquired new valences; it became a constant concern. From the very constitution of the United Nations Organization it has been pointed out the need to abolish force in international relations[7] and settle a peaceful, trustful and secure climate for all nations. Even in the preamble of the *Charter* it is proclaimed the decision of peoples belonging to the United Nations of not to make recourse to force in interstate relations, by being consigned their will to act with regard to the achievement of this major desideratum. "Let us develop friendly relations among nations based on tolerance – is sanctioned in this fundamental document –, let us take effective collective measures to maintain international peace and security", statuting the obligation of all members of the Organization to refrain in their international relations from the threat or use of force (art. 2). Thus, from the very adoption of The Charter and the creation of the world organization said, it has been solemnly stipulated *the passage to a law of peace,* of good neighbourly relations, of understanding and coexistence of all nations. In last years' international debates, particularly in those made in the plenum of the UN General Assembly, it has been emphasized that interstate relations had to be based on new principles, by totally giving up the system grounded on *imposing the right of the strongest.* Moreover, it has been underlined that "increasing rivalry constitutes one of the major causes of the deterioration of interstate

relations, *on force positions*, aiming at the extension of interest and influence areas"[8]. The assurance of worldwide peaceful relations is unconceivable provided an effective recognition of States' equal rights – regardless their size, economic or military power – to *peace and security*, as it is only this way that there are created conditions for the promotion of co-operation and common effort of States, nations and peoples in a climate of trust and mutual esteem. Under a consistent scientific vision, there are also important the regulations of juridical nature; however, it is unchallengeable that only by means of changing the political contents of international relations it becomes efficient renunciation to force and threat by force. Nowadays, it becomes more and more frequent taking position as well as convictions declared within the world forum and other international organizations, according to which peace implies the participation of States with equal rights in the attainment of the great objectives to surpass underdevelopment and to achieve economic and social progress[9].

Within an international system founded on equity and justice, possible disputes and litigations cannot be solved by using force – it is only by pacific means that they are found solutions. "Supposing that there are two kind of fights – underlined Cicero -, one using words and the other force, and considering that one is proper to man while the other is proper to beasts, we are to resort to the latter one, provided that recourse to the first one is simply impossible[10]. This wise saw, that might have reflected a reality of ancient times, has been added correctives over the years, which brought as an imperative must, the requirement to avoid, regardless all given circumstances, resort to force within interstate relations and make recourse to negotiations, by using pacific political means. Making reference to such a new approach of international life issues, the former secretary-general of the United Nations, U. Thant showed that "no matter the great dangers threatening humankind, they will never be greater than the possibilities we are given in order to hinder them"[11].

In the new terms of the progress seen by human society, as tendencies to the democratisation of international relations appear more and more pregnantly in the innovation processes occurring on a world scale, the elimination of force and threat by force becomes the target of fight assumed by peoples with possibilities of effective completion.

In spite of the fact that the sources of strain are maintained, that mainly during the last years new tensional states and moments as well as serious cases of use of force have appeared as a consequence to changes occurred to modifications concerning force balance on a world scale, there have been and there are still being improved the forms, procedures and means of their prevention and solution under the aegis of the United Nations Organization.

Renouncing to the threat and use of force as well as to all acts constituting factors of insecurity and permanent source of strain, represents a pressing need for the normal development of relations between States. It is a principle and, at the very same time, a fundamental norm[12] of the Law of Peace. Moreover, the *Charter of the United Nations* mentions this principle among its cardinal provisions: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" (art 2 p.4). This principle has been developed and materialized in a series of resolutions and declarations issued by the UN and also other important international documents[13]. The peoples firmly sustain the principle of abolishing force within international relations, they actively militate for the translation of the norms compatible with international legality into the practical terms of interstate relations, as well as for the application of these norms by measures meant to promote a climate of peace and good understanding[14]. The principle of renunciation to threat or use of force – being in an indissoluble connection with the other principles of international law – represents a major premise for international good understanding.

In the Final Act of the Conference on Security and Co-operation in Europe – giving voice to these important desiderata – is adopted the obligation of all participating

States to "refrain from the threat or use of force or any direct or indirect use of force against any other participating State. Moreover, they will refrain from any manifestation of force aiming to make another participating State to renounce to the unlimited exercitation of its sovereign rights[15].

The settlement and the enhancement of a climate of good understanding and worldwide co-operation presupposes recognition and respect for each people's right to freely choose the way of its independent and sovereign development; good international understanding imposes the pressing need to sanction and to translate into practical terms, within the current policy of all States, the imperatives generated by the application of the principle stipulating the abolishment of threat and use of force. The effective adoption of this Law of Peace principle meets the wide consensus in favour of abolishing the acts hostile to detente, generated by the intimidation policy and by all the attempts of deteriorating political atmosphere.

The time passed by since World War II also led to solutions given to further important litigious problems, repeatedly appearing on the international agenda. It is worldwide known that, in that period, significant armed forces and huge amounts of weapons have been concentrated, stirring the legitimate worry of peoples. That is the reason why an important step towards the creation of a climate assuring to each State the possibility to sanction the energies of peaceful work, safe from the threat of aggression, of menaces and political, economic, military or other sort of pressure, should be taken by means of settling a system of guarantees, implying *solemn politico-juridical pledges,* and by undertaking concrete measures specifically designed to make effective non-resort to threat and use of force in turning this fundamental principle of law into an effective reality of international life. Renunciation to the threat and use of force constitutes not only a principle, along with the other relations existing among all the nations of the world, but also an *important political objective.*

This system of guarantees requires the adoption of concrete measures – accepted by the signatory States of the Final Act of the Conference on security and co-operation in Europe – to the end of applying the principle of non-resort to threat and use of force, by all States' firm commitment to render effective – by all ways and methods found appropriate – the obligation to refrain from recourse to threat or use of force within their reciprocal relations; to refrain from using arms race, incompatible with the purposes and principles of the Charter of the United Nations, against the territorial integrity or political independence of any State. They also engage themselves to abstain from any act of economic restraint meant to subordinate to its own interests another State's exercitation of rights inherent to its sovereignty and, thus, assure for itself advantages of all kind; to undertake effective measures which, by their dissemination and by their own nature, constitute phases towards the ultimate objective of general disappointment under a strict and efficient international control; to promote, by ways and means found appropriate by each and every nation, a climate of confidence and mutual respect among peoples, in accordance with their obligation to refrain from any propaganda in favour of wars of aggression or any other threat or use of force against other States, incompatible with the purposes and principles of the United Nations; to concert every effort to settle, exclusively by pacific means, all dispute existing between them, to refrain from actions which might adversely affect efforts in the peaceful settlement of interstate conflicts[16]. Including within the Final Act of the European Conference said, a distinct chapter foreseeing stated measures, confers, undoubtedly, a new dimension to every concern for the definitive removal of force policy from the life of Europe and of the entire world.

The radical way to the integral application, with all the consequences it implies, of the principle of non-resort to threat and use of force consists, without any doubt, in the adoption of effective measures, within a broad programme bringing the world closer to the goal of general and especially nuclear disarmament.

Within the system designed to make non-resort to force effective, the means of informing and influencing public opinion occupy a central role. In this respect, it is necessary that States as well – in assuming their responsibility to forbid any form of war

propaganda – make use of the means of informing and influencing public opinion to *combat force policy,* acts of aggression and interference in other States' domestic affairs, to display and cherish the ideal of peace and brotherhood among peoples. It becomes obvious that for assuming such commitments and for undertaking such measures it is required the participation of each and every State, their concerted and determined action in promoting the system of concrete engagements and measures meant to ensure a peaceful future to the entire humankind.

Last years' debates on aggression – *the most brutal form of international violence* – have proved the real significance of specifying the meaning of this notion in order to make the effort to abolish threat and use of force. As well known, in 1974, the General Assembly fulfilled a difficult task, started in 1950 by adopting the definition of aggression and by recommending that this definition constitute the orientative criteria of the establishment of an act of aggression, namely making use of armed force by a State against the sovereignty, the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the Charter of the United Nations. It is also stated that all reason, should it be of political, economic, military or of any other nature, could not justify an act of aggression.

Although the sense given by the world forum to this form of using force acquires new, significant elements, it does not contain an essential component with serious implications in the practice of international relations, namely, *economic aggression.* However, according to former experience, it could bring about serious consequences in the system of international life. Therefore, resuming discussions and completing the given definition in specifying the complex meaning of aggression, might contribute to the organization of the preventive activities of peoples and nations against all acts running counter to the principles of law and equity, actions based on threat and use of force.

The removal of aggression and all aggressive acts, renunciation to threat and use of force represent fundamental desiderata concerning worldwide peaceful relations, conferring it contents and substance by ensuring it guarantees of achievement. The very act of seizing correlations between the renunciation to aggression and the removal of force, as well as their recognition as fundamental coordinates of a new system of international relations, outline the profound meanings of a peace edifice, based on democratic exigencies, on justice and equity.

Meeting the need to refrain from the threat or use of force and the abolishment of aggression from international life would mean a most significant pledge of States, which would act as an efficient political, legal and moral bridle on aggressive plans or intentions. It is unchallengeable that such engagement would contribute considerably to remove doubt, to limit the sphere of action of reactionary circles which are still counting on the threat and use of force within international relations. In this context, it clearly appears the incompatible character not only with operative international norms, but concerning the whole evolution of international political life, here including the options of the broadest social layers or political groups, of the acts running counter to real tendencies and chances that humanity could benefit of, with regard to the instauration of a genuine pacific order or a security system. Or, in this respect, the promotion of a *manu militari* – type policy, a policy using threat by force and all its derivatives, as proofs of force cannot but seriously harm recourse to force in interstate relations.

It has been believed for quite a long time that the notion of force implied only military actions, here including the acts of open aggression of a State towards another. However, history evinces a more complex nature of this concept, by mentioning economic, political, military and other sort of constraints and pressures. Under this aspect, there are of particular importance the norms set forth by the *Declaration on prohibiting military, political or economic constraint at treaty conclusions,* by witch it is "solemnly condemned resort to threat or use of any form of pressure, either military, political or economic, by any State, with the purpose to constrain another State to complete a certain act related to the conclusion of a given treaty, by breaching the principles of sovereign equality

of States and that of the freedom of consent"[17]. Lately, these interpretations become more and more known and acknowledged.

Experience showed that leaders of State, by giving up the language of menaces, the use and proofs of force, and by manifesting *realism, wisdom and patience,* could well find, by means of negotiations, solutions reciprocally accepted for the most complex and delicate issues of international relations. The interests of detente and security require active and consistent efforts for exploring and using all possibilities – political, economic, cultural, scientific, of co-operation and multilateral contacts – to settle the peaceful interstate relations that so many nations are longing for.

That is why, only calm political actions, constructive in guaranteeing the fertile ground of comprehension and trust between States, could become compatible with some authentical and genuine conditions of peace and security.

Setting interstate relations on the unanimously accepted grounds of law and justice – and, in this respect, the translation into practical terms of the principle of renunciation to force – would contribute to the creation of new premises with regard to the subsequent, gradual, step by step solution found for further problems. This would provide, at the same time, favourable conditions for the enhancement of fruitful and equitable interstate co-operation[18] for the benefit of each country, strongly influencing relaxation in the relations existing between all the States of the world.

It is also to be noticed that renunciation to the threat and use of force is expressly sanctioned in numerous international documents. In occupying an ample space within the documents of the Conference on security and co-operation in Europe, it represents an eloquent illustration of the concrete concern and preoccupation of States for the promotion of a new system of international relations. This constitutes, without any doubt, an important step forward towards the settlement of long lasting peace all over the world. It is also to be emphasized that the mere enunciation of these exigencies is not sufficient. It is required, as well, the adoption of certain measures meant to exclude, for good, the threat and use of force from the sphere of international relations. From such a whole perspective, it could be inferred the particular significance of renunciation to threat and use of force with a view to assure peace and to configure new international relations, which should be founded not on dictate, oppression and subordination, but on the democracy, equality in rights, equity, confidence and the security of all nations and peoples.

b. The Peaceful Settlement of International Disputes

From earliest times, it has been proved that the only alternative to force, aggression and war policy was represented by the peaceful settlement of all litigations. This is the reason why the obligation of States to solve their international conflicts by peaceful means, so that international peace and security be not jeopardized [19], constitute a *major component part* of the Law of Peace, a fundamental principle which statutes the practical modalities for preventing confrontations, conflicts and for the normal development of international relations.

The interdiction of resorting to threat or use of force is *directly related* with the obligation of all States to make recourse to exclusively peaceful means to settle litigations between them. In accordance with the *Charter of the United Nations,* the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by *negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means* of their own choice (art. 33 underl. en.). Thus, all States agree that the settlement or solution of all disputes of whatever nature they may be, which may arise among them, shall never be sought *except by peaceful means.* In the light of the provisions foreseen in the Charter, this obligation is in direct relation with the exigencies on the maintenance of peace, international security and justice.

Historical experience, mainly this century's events as well as the evolutions of the present international situation[20], prove that resort to

peaceful means, to negotiations and discussions, as well as to reasonable political solutions, represent *the only possible and logical modality of settling any dispute* or litigation. Peaceful settlement represents a *fundamental component of security,* necessary for the edification of international relations based on the exclusion of force, on mutual trust and understanding. Moreover, recourse to pacific means constitutes *the basic principle of international relations,* as it assures the necessary criteria and conditions for States to reach – by showing good-will and a spirit of co-operation – a rapid and equitable solution on the grounds of international law. Furthermore, solutions brought by pacific means represent *a method,* as it allows States to decide upon the way they would solve litigations among them.

It should be noticed that in the event that it could not be reached a solution by using one of the peaceful means stated in the Charter of the United Nations, conflicting parties *should continue* to seek for a mutually accepted means to pacifically settle disputes between them. The obligation of resorting to pacific means presupposes at the same time that both the conflicting States and the other States ***refrain from any acts which might aggravate the situation*** so that it may jeopardize the maintenance of peace international security, and thus, impede the settlement of the given dispute by peaceful means.

Starting from the exceptional importance of using *exclusively pacific means* for the regulation of litigations between States, it has been and it is still being manifested a particular interest to find adequate modalities with regard to sanctioning these obligations in juridical instruments meant to develop the provisions of the Charter and of other international documents. In this respect, it is imposed *the pledge of each State to resort constantly and exclusively to pacific means* to settle any conflict, and above all, to negotiations and direct consultations among the parties concerned. Such commitment has to take on a *solemn form,* considering its juridical force, with a view to its *integral* achievement by all States. There is no doubt that this way recourse to pacific means would become a general desideratum of peoples in a *quotidian and permanent modality* of solving all litigations appeared between two States, or, in general, within international relations.

The practice of international relations demonstrates that worldwide maintenance and consolidation of peace and security require solutions to all litigious problems among States by peaceful means, *by political means, by negotiations and discussions.* In the same spirit, the General Assembly of the United Nations debated – starting with 1979 – the problem of *"settling by pacific means disputes among States".* This issue has been examined and largely debated within the political and judicial commissions of the General Assembly. They had adopted several resolutions in this sense[21], submitted and, then, adopted by consensus in the plenum of the General Assembly. The debate of this matter gives expression to one of the fundamental orientations of the activities of the United Nations with regard to the edification of durable peace in the life of the planet. The adoption, at the XXXVIIth session of the General Assembly of the UN, of the *Declaration on peaceful settlement of disputes between States* reflects the contribution, the efforts and the constant concern of the world forum for using exclusively pacific and political means to settle all litigious problems existing in interstate relations. Moreover, the adoption of the declaration said, represents a solemn pledge of all governments[22] and all political leaders to do their best in eliminating for good force policy, dictate, domination and oppression from international relations as well as in refraining from any action meant to endanger peace and international security. The declaration said, has the merit of *bringing to the fore the exclusive use of pacific means and methods* to solve litigation between States. This declaration settles – concomitantly with general principles and exigencies – the solemn engagement of all States to solve litigations existing among them and, generally, disputes in international relations only by pacific means[23]. Such declaration becomes a *solemn politico-judicial instrument,* which gives voice to the decision of States to firmly make their option for pacific means[24] , by acknowledging the role and the significance of these means to seek and find lasting, *durable* solution. Furthermore, the declaration underlines, once more, the harmful character of violent means, the perils of

recourse to the threat and use of force in international relations. Giving voice to their will to resort exclusively to pacific means for the settlement of disputes, by adopting such a declaration, the member States of the United Nations firmly and resolutely emphasized *the role and functions* of peaceful means in peace *maintenance and consolidation,* in promoting conditions for co-operation and understanding among all peoples.

Undoubtedly, the maintenance and consolidation of peace imply resort to peaceful means, to solutions meant to be founded on such means. We are facing *a dialectical conditioning,* that is to say that peace relation not only *desideratively,* but also *imperatively,* requires resort to pacific means, to the whole system of modalities they include for the settlement of a given conflict.

Present times – characterized by a great complexity of international relations and the accentuation of contradictions and convulsions existing in different areas of the world – oblige us to pass from *general declarations,* good intentions, whose value is not to be underestimated, to the *assumption of express commitments* to resort only to pacific means to settle conflicts among them[25].

Solution found by peaceful means constitutes a guarantee for peace, as: **a.** it is only in case that a conflict is given solution by such means that it could be reached a *durable* settlement of imperilled relations, as a consequence to the litigation occurred; **b.** through a peaceful settlement it is achieved the *rapprochement of the conflicting parties,* as an outcome of a better understanding concerning the generating causes of conflict which determined the deterioration of the relations existing between the two States; **c.** resort to peaceful means constitute a *major condition of regaining trust* among the two parties, shattered by the appearance of the state of tension as well as of the originating litigation.

Experience shows that *it is not possible* to achieve a stable settlement of situations of conflict by means of the violent repression of one of the parties, in the attempt to defeat its will and determine it to accept the decision of the strongest party as far as its military-strategic power is concerned[26]. Researches also showed that regulations imposed by violent means had a *relatively short* life[27], as the party forced to accept it *did not and could not forget* the injustice[28] it had to endure. Still, thought and hope yearn to mend and rid injustice, they sprout from the very first moment and gradually develop in time, even if the oppressor – by means of his superior military force, aiming at maintaining an unjust and inequitable solution – accentuates the means of constraint used against the smaller and weaker State. A possible tensional state *smoulders* in the relations among the two parties, while the offended party waits impatiently for the *favourable moment* to act and end injustice committed upon it. This is the reason why, solution based on force *cannot be durable,* cannot determine the resettlement of the natural, normal course of jeopardized relations, as a consequence to the appearance of litigations[29].

Doctrine and practice draw attention to the fact that several essential elements[30] are to be found in the configuration regarding *the stability* of solutions found by pacific means: **1.** option made for pacific means constitutes an evidence for the fact that both parties expressed their *attachment* to these means, finding inappropriate methods based on force, pressure and constraint; **2.** settlement by pacific means hinders the negative evolutions of litigations, as it is able to *prevent* its deterioration into a serious conflicting state; **3.** ending the process during which disputes have been incontestably solved, leads to the reestablishment of the initial course of relations existing between the two parties, pledging for their re-orientation on their natural track. There are created the objective premises of normal coexistence[31] and the shadow of distrust, which set in along with the birth and extension of litigations is being gradually eliminated.

As known, it is only during peaceful settlement that it is achieved the *rapprochement of conflicting parties*[32]. It is hard to believe that in the process of using force and threat by force, pressure and constraints of any kind, the two parties might approach[33]. Relations between them develop under the sign of dissatisfaction and revolt which gain more and more ground, and – usually – materializing themselves in a *new*

outbreak of conflict, which acquires, in many cases, the form of a particularly serious open confrontation. It is only as a consequence to using peaceful means, that parties – by means of the contracts they frequently sign –, in the effort they make to find most appropriate solutions, reciprocally better understand their worries, thus accomplishing a gradual rapprochement – which constitutes a durable ground for regaining the territory lost by the occurrence of litigations, a premise for achieving peace again[34].

Many thinkers have openly asked: where could formulas based on violence really lead?[35]. What kind of mutual trust could there be between the two parties – whose litigation has been "solved" by violent means? Is it possible that – as time goes by – trust be regained?[36].

All these questions were given negative answers. Throughout history, the use of violent means did not and cannot ever constitute a source of confidence[37]. On the contrary, in all cases in which it has been made recourse to violence, to threat and use of force, *suspicion and distrust showed up* with both parties, each of them regarding suspiciously its opposite, and questioning on committed acts and deeds[38].

In the literature of specialty, it has been noticed that resort to peaceful means to settle conflicts occurred, represented the only premise of regaining trust among conflicting parties as – both during efforts made to solve the given litigation and even after it, when the conflict has already been settled – both parties *gradually come into normal relations,* in direct contacts on different planes, trust gaining more and more ground, while the elements of strain and doubt which lasted during litigations have been eliminated. It is easy to understand that it is only in cases in which the two parties manifest political will and act resolutely to do away with the causes of dispute and its consequences, trying by concerted efforts – those truly appropriate solutions, that confidence rises again and suspicion is ridded. This is the climate that germinates the condition of peace and stimulates relations based on it.

c. Non-intervention (non-interference) in Affairs Concerning a State's National Competence

c.1. Intervention and interference in another State's affairs represent an instrument of expansion and domination policy exercised by larger States against smaller and weaker countries. "It is – according to Titus Livius' remark – the attitude of a master towards his servant"[39], while in Herodot's opinion it represents an attitude of "domination and power"[40]. It jeopardizes peace and generates tension and suspicion, along with the wish to "regain the dignity" of those whose right has been violated[41]. In order to maintain peaceful relations, Wolff proved that "States should not harm to each other and that they have the right not to let States interfere into each other's regime"[42]. Meanwhile, Vattel specified that "it is an obvious outcome of the freedom and independence of nations that all of them have the right to self-government according to the ways they consider appropriate and that *none has the least right to interfere in another State's government*"[43]. We find similar points of view with ample and documented contemporary works of law and international relations[44].

Sanctioned by the 1793 French Revolution, this principle has been violated, later on, during the wars waged by Napoleon Bonaparte; non-intervention in affairs concerning the national competence of a State are enhanced in Monroe's doctrine, which by the message addressed to the Congress of December 2, 1823 stated "the free and independent state of the American continent". This *important principle of the Peace of Law* has been frequently invoked by smallest and weakest countries against the larger and more powerful countries' policy of interference in their domestic affairs. Moreover, it has been partially sanctioned by the 1907 Conference of Hague and, then, after World War I, in art 15/8 within the Pact of the League of Nations.

c.2. The obligation of non-intervening in the affairs concerning the national competence of a State represents a fundamental principle of the Law of Peace, as it is only this way that it becomes possible to develop normal relations between States, to preserve and consolidate trust among peoples and to enhance relations of mutual respect.

This principle also has a particular significance in the promotion and maintenance of peace. It is known that great powers – taking advantage of their economic, military, political and technical and scientific superiority – interfere or try to interfere in other States' internal or external affairs[45]. States are vitally interested in the integral settlement and observance of the principle of non-intervention, which explains their large consensus[46] with regard to *Declarations on the inadmissibility of intervention in the domestic affairs of States and on the protection of their independence and sovereignty*[47]. History registers the outstanding importance of defending, enriching and strengthening the principle of non-intervention, a shield to the right of all peoples to freely organize their life according to their own interests and aspirations, with no interference from the outside. Intervention in the domestic and foreign affairs of a State endangers international peace and security. Interference from the outside revokes the given State's freedom of decision, violates national independence and determines a state of great tension among the States involved.

It is a matter of evidence, the fact that not only domestic but also foreign affairs belong to the sovereign attribute of the independent State, as in their practice it is not allowed the interference of other States[48]. This is the reason why it would be considered an act of intervention in a State's international affairs – which, according to art. 2, § 7 in the UN Charter, "are essentially under a State's national competence"-, if a third State tried to prescribe to it the recognition of another State. In the same way, it is to be understood the settlement – or the rupture, suspension, resumption etc. – of diplomatic relations with another State. Certainly, it is not about an internal but an international problem of a State. However, the attempt of any other power to interfere in the way that a State sees the solution to this problem concerning its international relations, would constitute a harm to the exercise of an independent State's sovereignty.

Non-interference in another State's affairs is in a close correlation with non-resort to threat and use of force as well as with the other fundamental norms and principles of the Law of Peace. History shows that intervention in other State's affairs would be usually committed by larger and more powerful States, as the expression of a dictate, subordination and oppression policy. In most cases, weaker and smaller States became the victims of such policy. Interference in domestic affairs is, usually, made by open or subtle pressures that the given States are to undergo. This is why, during the latest decades, mainly the years after World War II, concern to elaborate normative texts in order to put an end to interference in other States' affairs has gained more and more ground. Thus, for instance, art. 1 in the International Pact of civil and political rights, identical, as a text, with art. 1 in the International Pact of economic, social and cultural rights, adopted the General Assembly by Resolution no. 2200/XXI of 16 December 1966, has the following contents:

"1. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, with regard to their own goals, freely dispose on their natural riches and resources, without the prejudice of any obligations devolving from international economic cooperation.

3. Party States in the present contract, here included those that are liable for the administration of territories which do not administer themselves freely and territories under trusteeship, shall promote the right to self-determination and shall observe this right, in accordance with the Charter of the United Nations".

Although non-interference in another State's affairs as a fundamental principle and norm of the Peace of Law encounters difficulties and obstacles in the process of its implementation, it gradually continued to make its way. Moreover, it is foreseen that in a short historical time the principle become acknowledged[50], that is to say that it might become mandatory for all States, not only *de iure* but *de facto*, as well.

The principle of non-intervention in other State's affairs is sanctioned in the UN Charter

(art. 2 § 7), in different statutes of other international organizations, as in other multilateral conventions, such as *the Pact of the League of Arabian States*[51], *the UNESCO Constitution* (art. I § 3), *The Charter of the American States Organization*[52] , *the 1961 Convention of Vienna, on diplomatic relations* (art. 41) *and the 1963 Convention on consular relations* (art. 55 § 1), as well as in *the Charter of the 1963 African Unity Organization* (art. 3 § 2). Furthermore, non-intervention has been sanctioned in numerous declarations and other international documents adopted by the conferences of States[53] being, at the same time, steadily, invoked by the Permanent International Court of Justice, in several litigations it has tried[54], as well as by the International Court of Justice[55]. International practice constantly shows the certain significance of observing the principle of non-intervention concerning the exercise – in the terms of co-operation and common effort – of the external functions of States[56]. In the Declaration regarding the principles of international law on friendly relations and co-operation between States it is sanctioned the fact that "no State or group of States has the right to intervene, directly or immediately, for any reason, in a State's internal or external affairs. Consequently, not only armed intervention but any other form of unwarrantable interference or threat, directed against a State's personality or against its political, economic and cultural elements, are contrary to international law". On the grounds of this important international document, no State can apply or encourage the use of economic, political or any other sort of measures to constrain another State to obtain from it any kind of advantages. Moreover, all States shall abstain from organizing, assisting, stirring, financing, encouraging or tolerating subversive or terrorist armed conflicts meant to change, by means of violence, the regime of another State as well as to intervene in another State's internal fights. It is specified that use of force in order to deprive peoples of their national identity constitutes the violation of their inalienable rights and of the principle of non-intervention and that "any State has the inalienable right to choose its own political, economic, social and cultural system with no interference from the part of any other State".

NOTES:

[1] See *Principles of International Public Law,* Edit. Ştiinţifică, Bucharest, 1968; Grigore Geamănu, cit. work, vol. I, 2nd ed., p. 177 and next; Edwin Glaser, *The right of States to participate in international life,* Ed. Politică, Bucharest, 1982; Victor Duculescu, *Continuity and Discontinuity in International Law,* Editura Academiei, Bucharest, 1982, p. 11 and next; M. Niciu, *International Public Law,* Course notes, t. I-II, Cluj, 1956; N. Tatomir, *Course of International Public Law,* Bucharest, 1961; Alexandru C. Aureliu, *Principles of interstate relations,* Bucharest, Edit. politică, 1966; Gheorghe Moca, *State sovereignty and Contemporary International Law,* Bucharest, Edit. Ştiinţifică, 1970; M. Virally, *Droit international et décolonisation devant les Nations Unies,* in A.F.D.I. Paris, 1963, 1964; G. I. Tunkin, *Coexistence and International Law,* in R. C., vol. 95, 1958; R. L. Bobrov, *Sovremennoe mejdunarodnoe pravo,* Leningrad, 1962; D. B. Levin, *Mejdunarodnoe pravo,* Moscow, 1964; H. Waldock, *General Course on Public International Law,* in R. C., vol. 106, 1962; P. Reuther, *Principles of International Law,* vol. 103, 1961; M. Sörensen, *General Principles of International Law,* vol. 101, 1960 etc.

[2] See *Report of the International Law Commission on the work of its forty-seventh session,* 2 May – 21 July 1995, General Assembly Official Records, Fiftieth Session Supplement No. 10 (A/50/10); Also see *Report of the International Law Commission on the work of its forty-ninth session,* A/O/6/52/L 15 of November 15, 1997.

[3] See *Declaration on the principles of international law regarding friendly and co-operation relations between States,* according to the Charter of the United Nations, adopted in 1970 at the XXVth jubiliary session of the UN General Assembly.

[4] See *Declaration on principles governing the relations existent between participating States,* chapter 1A of the Final Act, in the volume *Conference on security and co-operation in Europe,* Edit. Politică, Bucharest, 1975, p. 281-290; *The Charter on the economic rights and duties of States,* resolution no. 3281 (XXIX) of December 12, 1974.

[5] This state of things is deeply rooted in the history of international relations. Numerous thinkers underlined unfairness and injustice caused by the acts of force carried on by the strongest (see Aulus Gellius, *Attic Nights,* XX, 1, 15, Bucharest, Editura Academiei, 1965, p. 495 and next.; P.F. Girard, *La loi des XII Tables,* London, 1914; U. Brassielo, *La repressione penale in diritto romano,* Napoli, 1937).

[7] From the very beginning of this century it has been experienced a certain limitation to using force (the Drago doctrine, 1902-1903); later on, it is sanctioned „the prevention, as far as possible, of recourse to force in interstate relations" as necessity for the normal development of international life (*the conventions regarding the pacific settlement of international conflicts,* signed at Hague on the 18th of October 1907, in Martens, N.R.G., vol. III, p. [illegible]; in 1917 it is solemnly declared that war of conquest is "a most serious crime against humanity" *(Decree on peace,* in Documents of the external policy of the U.S.S.R., vol. I, 1957, p. 12); *it is condemned the aggressor (Treaty of Versailles I,* in Martens, N.R.G. 3, vol. XI, p. 479); in the *Declaration of the Assembly of the Society of Nations held on the 24th of September 1927, it is stipulated that "any war of aggression is and shall be forbidden" (the Society of Nations, A Monthly Digest of Works,* vol. VII, 1927, p. 285). Furthermore, one year later, it is adopted at Paris The General Treaty for renunciation to war, known as *the Briand-Kellogg Pact;* on the 10th of October 1933, it has been concluded at Rio de Janeiro the Inter-American Treaty against war, a treaty of non-aggression and conciliation, also named the *Pact of Saavedra Lamas,* in which several European States took part, among which Romania, as well (*United Nations Systematic Survey of Treaties for the Pacific Settlement of International Disputes,* 1928-1948, Lake-Success, New York, October, 1948, p. 1038 and next).

In the Declaration of the United Nations, adopted at Washington on the 1st of January 1942 as well as in the Charter project of Dumbarton Oaks, adopted in October 1944, it is formulated the principle of prohibiting the use and threat by force, reasserted in the Convention signed at London on the 8th of August 1945 by the U.S.S.R., U.S.A., Great Britain and France, in the statutes of the International military tribunals in Nürnberg and Tokio in 1945. This principle is also statuted in the Pact of Bogota on the 30th of April 1948, in the Charter of the African Unity Organization, adopted at Addis-Abeba on the 26th of May 1963, in the Declaration regarding world peace and co-operation, adopted at Bandung on the 24th of April 1955, in the declarations made by the heads of State and the governments of non-aligned countries, at Belgrade on the 6th of October 1961, at Cairo in 1964 and in Alger in 1973.

[8] Lazar Moisov, *Speech made at the XXXVII[th] session of the UN General Assembly,* October 2, 1982.

[9] See *resolution no. 3362 (S-VII),* September 18, 1975; see *resolution 52/194,* adopted by the UN General Assembly, by consensus, on the 18th of December 1997, A/52/628/Add.6; also see *Global financial flows and their impact on the developing countries,* Resolution adopted by the UN General Assembly, by consensus, on the 18th of December 1997, A 52/626/Add.1.

[10] Cicero, *On Duties,* Bucharest, Edit. Ştiinţifică, 1957, p. 165.

[11] U. Thant, *Message à l'occasion de la journée des Nations Unies,* 1965, *Communiqué de presse,* doc SG/SM/22, p. 2.

[12] See H. Wehlberg, *L'interdection de recours à la force, le principe et les problèmes qui se posent,* in R.C., 1951, I, 78. p. 45 and next; E. Glaser, *The Contribution of Romania to the Progressive Development of Contemporary International Legality,* in R.R.D., 1969, nr. 8, p.59 and next.

[13] See resolution no. 2160 (XXI) and 2230 (XXII).

[14] See L.F. Damrosch & D.J. Scheffer, eds., *Law and force in the new international order,* Rev. by J. Manas, Harvard Intl. L.J., 36, '95, p. 245 and next.

[15] *Declaration on Principles Guiding Relations between Participating States,* within the *Conference on security and co-operation in Europe,* p. 283.

[16] *Ibidem,* p. 290-291.

[17] *The Final Act of the Conference of Vienna on the law of treaties,* § I, Vienna, 1969.

[18] See *Résolution adoptée par l'Assemblée Générale sur le développement et cooperation économique internationale,* nr. 3362 (S-VII), September 18, 1975, see *Global partnership for development: high-level international intergovernmental consideration on financing for development,* A/52/626/Add I of. 18 Dec. 1997.

[19] *Declaration on the principles of international law regarding friendly relations and co-operation between States in conformity with the Charter of the United Nations,* adopted in 1970 at the XXV[th] jubiliary session of the General Assembly of the United Nations; special attention is paid to solving disputes between States within the works of the Special Committee for the Charter of the United Nations and on the Strengthening of the Role of the Organization. Thus, in 1998 it has been decided that this important organism of the United Nations Organization "continue its activity on finding pacific solutions for interstate disputes" *(Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,* A/RES/52/161 of 16 January 1998.

[20] Also see Gregory F. Treverton, *Nuclear Weapons and the "Gray area",* in F.A., no. 5, 1979, p. 1077 and next; also see Thomas L. Neff and Henry D. Jacoby, *Nonproliferation Strategy in a Changing Nuclear Fuel Market,* in F.A., no. 5, 1979, p. 1142-1143.

[21] Doc., A/C/.1/34/L. 45 of 23 November 1979; doc. A/C.6/36/1981.

[22] Winn, *Règlement par des moyens pacifiques des différends entre Etats,* doc. A/C. 1/34/L.45, of 28 November 1979, p. 18.

[23] Settlement by pacific means – showed the representative of Mauricius – has a particular significance in "the edification of a security system, guaranteeing the independence, sovereignty and territorial integrity of each and every State" (Ramphul, *Règlement par des moyens pacifiques des différends entre Etats, doc.* A/C.1/34/L.45, of 28 November 1979, p.22).

[24] As the representative of Cyprus showed, "the call addressed to all States to immediately co-operate for the elaboration of a Declaration on the pacific settlement of dispute is welcomed by my delegation" (Rossides, *Règlement par des moyens pacifiques des differends entre Etats, doc.* A/C.1/34/L. 45, of 28 November 1979, p. 28).
[25] See *Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,* A/RES/52/161 of 16 January 1998.
[26] Also see Simone Courteix, *Exportations nucleaires et non-proliferation,* Paris, Economica, 1978, p. 19 and next.
[27] Also see Thomas Parrish (ed.), *The Encydopedia of World War II,* London, Seker and Warburg, 1978, p. 109 and next.
[28] See *ibidem.*
[29] An ample analysis is made within a thorough synthesis appeared under the auspices of the United Nations Institution for Training and Research (UNITAR): K. Venkata Raman (ed.), *Dispute settlement through the United Nations,* Dobbs Ferry, Oceana Publications, 1977, p. 103 and next.
[30] See M.D. Donelan and M.J. Grieve, *International disputes: Case Histories 1945-70, International Relations,* 1978, p. 203 and next. Also see Thomas Parrish (ed.), *cit. work,* p. 504 and next; also see K. Venkata Raman (ed.), *cit. work,* p. 311 and next.
[31] See Thomas Parrish (ed.), *cit. work;* also see Michael Howard, *The Forgotten Dimension of Strategy,* in F.A., no. É, 1979, p. 981 and next; also see K. Venkata Raman (ed.), *cit. work,* p. 234 and next.
[32] See *American Thinking about Peace and War,* edited by Ken Booth and Moorhead Wright, Hassocks, Sussex: The Harvester Press, 1978, p. 21.
[33] See *ibidem,* p. 34.
[34] See Pierre Lellouche, *La France, les SALT et la sécurité de l'Europe,* in P.E., no. 2, 1979, p. 262-263.
[35] See K. Venkata Raman (ed.), *cit. work,* p. 15 and next; also see ample studies elaborated by Jacques Freymond and Phillippe Rondot, in P.E. no. 2, 1979, p. 149-187.
[36] See Jules Robert Benjamin, *The United States and Cuba: Hegemony and Dependent Development, 1880-1934, Pittsburg,* University of Pittsburg Press, 1977, p. 29 and next.
[37] *American Thinking about Peace and War,* p. 183 and next.
[38] See M.D. Donelan and M.J. Grieve, *cit. work,* p. 11 and next. Also see *American Thinking about Peace and War,* p. 189 and next.
[39] **Titus Livius**, I, 38,21.
[40] **Herodot**, VII, 133.
[41] **Plautus**, *Amfitrion*, v. 258 and next.
[42] **C. Wolff**, *Institutiones iuris naturae et gentium,* § 54.
[43] **E. Vattel**, *Droit des gens. Preliminaires,* Book II, chap. IV, § 54.
[44] **See Grigore Geamănu**, *cit. work,* p. 209 and next; Alexandru C. Aureliu, *cit. work,* Gheorghe Moca, *cit. work,* p. 176 and next; P.B. Potter, *L'intervention en droit international moderne,* in R.C., vol. 32, 1930; Q. Wright, *Intervention,* in A.J.I.L., vol. 51, 1957; T. Mitrovic, *The Principle of Non-Intervention in Contemporary International Law,* in Jugos., R.M.P., no. 1, 1964 etc.
[45] See J. Fawcet, *Intervention in International Law,* in R.C., 1961, vol. II, 103, p. 353-354.
[46] The draft of the Declaration said, has been presented by 57 States while the Resolution was adopted with 100 votes 'in favour' and 5 abstentions.
[47] Resolution no. 2131/XX, of 21 December 1965.
[48] For instance, it is up to each independent State to appreciate whether and in which degree it understands to recognize a new State, provided, of course, that the act of recognition or the declaration of non-recognition was not part of an illicit policy, for example meant to prepare an act of aggression.
[50] See Grigore Geamănu, *cit. work,* p. 209 and next.
[51] Art. 8 of this Pact (adopted on the 22 of March 1945) foresees the obligation of each State of the League *to observe the form of government established in the other member States.*
[52] On the grounds of art. 15, "no State or group of States has the right to intervene, directly or indirectly, for any reason, in the internal or external affairs of any State". This principle forbids not only armed intervention but any other form of intervention or threat against the personality of a State or against its political, economic or cultural elements.
[53] For example, the 1955 Conference of Bandung, the 1961 Conference of Belgrade; the 1977 Conference of Manila.
[54] In this respect, litigations concerning the decrees on nationality of Tunisia and Morocco and the case of Aaland Island (1920).
[55] Cases concerning asylum (1950), Nottebohm (1955), Norvegian loans (1957), the right to pass through Indian territories (1957) etc.
[56] See E. Glaser, *La guerre d'agression à la lumière des sources du droit international,* Paris, 1953; B. Jakovlevic, *The principle of Prohibition of the Threat and Use of Force,* in Jugos. R.M.P., 1964, no. 1; R. Glaser, *The Right to Peace,* in S.C.J., in 1958, no. 2, p. 209-248; also see I.V. Sarmazanasvili, *Printip nenapadenia v mejdunarodnom prave,* Moscow, 1958, p. 34 and next.

Neutrality: Between Law and Politics

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Broadly defined, neutrality is the position of a state that is not at war and does not participate at hostilities. Yet, neutrality is more than just a position. It implies a legal status defined as a set of rights, obligations, and privileges that have to be acknowledged by both belligerents and neutrals, and that are components of the law of neutrality. This law regulates the coexistence of war and peace for states – that is some states are at war with other states while maintaining peaceful relations with others.[1]

Defining the way in which the belligerents and neutral states should act or abstain represented a complex issue in the international public law, because the inter-state relationships are determined not only in terms of war and peace but also in terms of social, economic, and cultural flows. Traditionally, the neutrality is defined as 'the legal status of a state that adopts a position of impartiality towards two other states that are at war with each other.'[2] Under this definition, the law of neutrality is based not only on the principle of non-participation or abstention from participating at military conflicts but also on the principle of impartiality. The latter principle derives from legal obligations, which leads to the conclusion that the neutral state must deal with all contending parties similarly or non-discriminatory; that is, the neutral should not favour, directly or indirectly, the emergence of political and military situations more beneficial for one side.[3] For this reason, the legal literature employs the notion of impartial neutrality. There should be added here the notion of prevention, without which the legal or impartial neutrality is not complete. Prevention originates from the norms prescribing how the neutral states should act if a belligerent infringes their neutral status.[4] The obligations constituting the principle of impartiality, abstention, and prevention are 'correlative',[5] which means, generally, that the belligerents must respect the will of a state to be neutral.

Although the law of neutrality seems clear, it becomes complex when applied to the present context. How is the law of neutrality employed in contemporary armed conflicts? Is the neutrality the uniquely acknowledged status of a state that does not want to participate in armed conflicts? A negative answer requires the analysis of other accepted options and of the legal obligations beyond the acknowledged law of neutrality.

Moreover, the political option of a state to secure its non-participation in future conflicts – known in international relations as permanent neutrality and non-alignment – is another important issue for grasping the concept of neutrality. Although the legal status of these notions differs – the permanent neutrality has a legally defined status that implies legal obligations derived from treaties and domestic state law, whereas the non-alignment has no legally defined status – they are similar in respect to the state's option of non-participation to collective defence pacts. Must the so-called neutrals apply the law of neutrality in case of an international military conflict among other states? A delicate issue emerges in this situation when the neutrals participate in international systems that are economic, politically, and culturally integrated. Such an example is the European Union. How can the EU neutrals still define their neutrality based on legal obligations if an

EU member participates in an international military conflict? In other words: what is expected from an EU neutral state when the EU security is threatened, or when an EU state is in military conflict with another state, presumably a non EU member?

To clarify the issues presented here, I will explain the concept of classical neutrality, the relations between neutrality and the UN collective security system, the concept of quasi-neutrality, and the 'European Security and Defence Policy.'

The 1907 Hague Conventions that regulate the neutrality in war on land and sea are out-of-date. They are not obsolete in the legal sense because they continue to be part of the international public law.[6] But they are multilateral treatises that codified rules based on treaties and customs, which formed the law of war and neutrality in past centuries, predominantly in the nineteenth century. In that time the states were able to wage war against each other and the status of neutrality began and ended according to a state of war. Moreover, the limits of the war technique confined the war to land and sea (the 1923 Hague Draft Rules of Aerial Warfare is not legally effective but it is considered declaratory of the existing principle). On the contrary, in the contemporary international law, the war is outlawed; but there are non-war situations[7] – called international armed conflicts – that occur between states. In the contemporary setting there is the United Nations security system, but no general norms prescribing precisely how the third-party states should act when the UN Security Council fails to declare the aggressor state and the victim state, or when a UN permanent member blocks the procedure. For this reasons, the impartial neutrality – part of the traditional international law of the system of states existent before World War I – is also called the classical neutrality.

The law of neutrality emerged from the European state system after the Peace of Westphalia, and it evolved: first, as contractual neutrality based on the seventeenth- and eighteenth-century bilateral treaties; second, through the nineteenth- and beginning of the twentieth-century institutionalization and codification. I highlight this evolution by comparing legal doctrines in different historical times. Hugo Grotius distinguished two types of neutrality: (1) the neutrality that hinders the power of the belligerent with an unjust cause and favours the belligerent with a just cause – this may be named imperfect or quasi neutrality; (2) the neutrality that treats the belligerents equally assuming that it cannot identify the belligerent on the just side – this may be named impartial neutrality. Thus, the essence of the neutrality policy changes according to the specific nature of the war: just or unjust. Eighteenth-century law scholars, such as Cornelius Van Bynkershoek and Emmerich de Vattel whose thought was rooted in the positive international law, considered that *non-hostes* or *neutral nations* must act unbiased in relation to belligerents.[8] According to the nineteenth-century law scholar Klenn, only the impartial neutrality was accepted.[9] What happened with Grotius' twofold way of non-participation: quasi neutrality and impartial neutrality? Why only the impartial neutrality succeeded to be generally accepted? The answer lies, partially, in the nature of the political configuration of the international society.[10] The legal international norms result from coordinated consensus among states. The key for understanding the public international law is therefore the link between the international politics and the generally accepted and recognized international rules.

The legal rules of neutrality originated from the balance of power system that allowed for flexible alliances and military capabilities distributed among the Great Powers in a pattern of approximate parity. The bilateral treaties of friendship, trade, and navigation in a standard pattern[11] confirm that the central states were interested in preserving the trade between countries in case of war. The balance of power system saved the law of neutrality when Great Britain banned the maritime trade between its enemies and the neutrals. The neutrals built alliances to deter the British aggressive actions against their interests and trade – the so-called 'Neutrality Leagues' or 'Leagues of the Armed Neutrality.'[12]

After the Napoleonic wars, the law of neutrality evolved based on treatises and customs developed during the wars. Two processes affected significantly this evolution: the shift from contractual neutrality to institutional neutrality and the emergence of neutrality as a strategic and security policy for the small states in time of peace. The institutionalization of neutrality implies that the norms are generally accepted in the international society by means of multilateral treaties, not only bilateral contracts, negotiated and adopted at international conferences.[13] The series of conferences started with the Congress of Vienna (1815), where the international law began to be codified. International law evolved continuously within the political reality of the multipolar balance of power system and was complemented by the Great Powers' consensus (the 'European Concert') that legalized the international law institutions in the form of multilateral treaties. The states' decision-makers, concerned with the laws of war, related them to neutrality, because some states could be at war while other states might want peaceful relations with them.[14] For example, Great Britain, Prussia, and Russia were neutrals in the war among France, Italy, and Austria (1859); Great Britain and Russia were neutral in the war between France and Prussia (1870-71); in the Ottoman – Russian war (1877-78), the other Great Powers remained neutral. At the Conference of Paris (1856), a part of the law of maritime war was codified under the treaty known as 'The Declaration of Paris', which contains the legal principles of free trade between belligerents and neutrals, as well as the principles of blockade and contraband that are also important in the belligerent-neutral relations. At the second Hague Conference (1907) the law of war and neutrality was codified under the fifth 'Convention Respecting the Rights and Duties of Neutral Powers, The Persons in Case of War on Land' and the thirteenth 'Convention Concerning the Rights and Duties of Neutral Powers in Naval War.'

The permanent neutrality emerged in the nineteenth century as a result of the European Great Powers' policy. Several small states needed to secure their neutrality in potential wars. At the same time, the political-military strategists of the Great Powers considered some of them geo-strategic locations, vital during war times. The sources of the legal permanent neutrality are the domestic law of the small states and the multilateral treaties that warranted or recognized their neutral status. The first, and most traditional example, is Switzerland.[15] Located at the bottleneck of the Alps, Switzerland was a buffer state between France and the Habsburg Empire and later between Germany, France, and Italy. The Swiss neutrality is based on the Swiss Constitution and on the guaranty treaty adopted by the Great Powers at the Congress of Vienna, in 1815. Similar cases are Belgium – neutral from 1839 and considered a 'strategic glacis' for Great Britain – and Luxembourg – neutral from 1867 and considered a buffer state between France and Germany. A different case is Sweden. Strategically located at the periphery of the system, lacking constitutional obligations able to stop its participation in political-military treaties, and unbound by multilateral treaties to the permanent neutrality, Sweden chose a non-alignment policy in the nineteenth century. This position is rooted in the tradition of its foreign policy backed by the majority of the political elite and citizens.[16]

I explained above the emergence and development of the classical neutrality not for the sake of history, but for a better understanding of the political setting of the contemporary international society, which helps unveil the positions of third-party states in military conflicts. The obligations of the traditional neutrality were designed to protect the interests of both belligerents and neutrals. The belligerents did not want that third-party states favour the opposite side; the neutrals wanted to protect their status and to avoid entanglement in undesired wars. However, the law of neutrality was not designed for cases of collapse of international order, more specifically of generalized war. Seven years after the two Hague Conventions – that reached a climax in the evolution of the law of neutrality[17] – the neutrality was challenged by major events in international relations: the two

world wars followed each by attempts of organizing the international society that aimed to eliminate the 'international anarchy.'

For the purpose of this article – that does not aim to describe and analyze the unfavourable situation of neutral states and the way they moved off from the traditional legal obligations of the neutrality during the world wars[18] – it is enough to mention that after the World War I and II, waging war was prohibited as an instrument used by states (see the Briand-Kellog Treaty 1928 and the UN Charter 1945). Under the collective security theory, this implied the removal of the impartial neutrality, so that states acted, at different extent, against the aggressor states and favoured the victim states. In reality, the impartial neutrality survived twice; in legal terms, this was a return to the twofold stance of non-belligerency: impartial or quasi neutral.

The Covenant of the League of the Nations did not make the war obsolete but it limited it. On the basis of art.16, states that do not fight military against the state that breaks art. 12, 13, and 15 are bound by some obligations that offer them the status of quasi neutrality.[19] But the League of the Nations did not succeed to limit the wars and the Briand-Kellog Treaty did not provide for specific sanctions against the states that broke the obligations of the treaty. The UN Charter is better equipped in this matter: war, aggression, and the use of force are proscribed in inter-state relations. Moreover, it provides for a mechanism that works against the state that breaks or endangers the international peace. In the following, I analyze the neutrality in the context of the UN collective security system and the contemporary state practice of neutrality and non-belligerency.

The UN Charter has not suspended directly the lawfulness of the impartial neutrality. The central aspect of the UN law's impact – particularly the Chapter VII of the UN Charter on the right of a state to exercise the traditional law of neutrality – deals with how states, third-party in an international armed conflict, can be required legally to deviate from the law of neutrality. It is less important how the UN system should operate in relation to neutrals than how the UN system actually works based on a precedent.

The most relevant case – and almost unique if considering the Korean case less significant for this discussion – is Iraq's aggression against Kuwait. The Security Council (SC) Resolution 660 – adopted on August 2, 1990 – stated that Iraq was an aggressor state based on art. 39 of the UN Charter.[20] This Resolution does not constrain the states to deviate from the traditional obligations of neutrality; it only creates the right of a neutral state that adopts the neutrality status to help the victim state in non-military ways. Based on art. 40, the SC can ask the states participating in military conflicts to conform to some provisory measures such as the call to suspend the hostilities.[21] This type of resolution has no impact on neutral states. Only a binding resolution under art. 41 such as Resolution 661,[22] corroborated also with art. 2 (5) and art. 103 can force the neutral states to deviate from the law of neutrality, specifically to suspend, partially or entirely, commercial relations and communications of any type such as communication by air, radio, mail, and train, among others. An example in this sense is the total embargo in the Iraq case.

The resolution that constrains the states to stop the diplomatic relations with the aggressor state is not considered a deviation from the obligations of neutrality. No neutral state was ever forced by the SC to act military against a state that was considered aggressor. The SC authorizes the states or state coalitions to use the force against the aggressor states, but the neutrals are not forced to participate actively, only to deviate from the law of neutrality based on art. 41. Thus, the SC resolution under art. 41 renders compulsory another type of neutrality that bounds the states, which do not want to participate in a military conflict, to discriminate one side of the conflict. This is an important support for the opposite part of the conflict that has the SC authorization to use the force. Art. 41 suspends the law of neutrality, which is also related to the UN Charter art. 2 (5) and art. 103. The deferral of the law of neutrality is limited to the special obligations enshrined in the SC

resolution that does not allow the neutral states to deviate from the neutrality law in favour of the aggressor state. For example, USA asked Iran to respect the neutrality law and held the Iraqi military air units present on Iranian territory.[23] This type of neutrality has no official name; it can be named quasi neutrality, along with other names: qualified, imperfect, and differential neutrality.

The resolutions under art. 39 create rights (possibilities), but no obligations for the neutral states to sanction the aggressor state by means of sanctions such as the ones mentioned above under art. 41, or to sustain passively the military actions by allowing for free transit of the military units that move to fight against the aggressor state. Examples in this sense are Austria, Ireland, and India that permitted the free transit.[24] It should be emphasized that the Iraq-Kuwait case is a rare example in which states, third-party to a military international conflict, know clearly how they should act under international public law. These issues become blurred in situations in which the force is used under a SC resolution that implies[25] the authorization of the use of force (this is the case of the Kosovo War and the recent US-Iraq war), or in situations of military conflict between states without any SC resolution identifying the aggressor state. The confusion is caused by two major factors: one refers to the radical change of the political reality after the World War II; the other refers to the modern *ius ad bellum*.

The international society of states after the World War II was characterized by bipolarity (during the Cold War) and unipolarity (after the Cold War). Therefore, the situation in which several central actors are at war while others are neutral is no longer possible, as it was in the nineteenth century. During the Cold War, USA and the former USSR, as two superpowers, could not afford the war against each other because of the nuclear balance; after the Cold War, USA is the only central actor. In this type of power system, the law of neutrality is not anymore the uniquely accepted status for states that are third-party in military conflicts between other states. In both the unipolar and the bipolar systems, third-party states are not so keen to apply the legal obligations under the traditional law of neutrality. For example, it was no secret that the Soviet Russia was sustaining the North Vietnam against the US. Under the traditional international law of neutrality, the US would have been entitled to declare war or to retaliate against the Soviet Russia. But it is well-known why this never happened. On the other hand, the US retaliated against Cambodia under the right of self-defence.[26] This practice does not lead to a customary law because in similar cases states acted differently. It is obvious that also Iran could not afford to declare war against the US when the latter deviated from the law of neutrality favouring Iraq, in the Iran-Iraq war.[27] In the unipolar world, there are many states interested in supporting, to a different extent (supposedly not military), the central actor in a military conflict situation, and other states interested in applying the strict neutrality, in different circumstances.

All these stances in cases of armed conflicts across international boundaries, outside the UN framework, apparently chaotic – in the sense that some third-party states are neutral in the classical sense and other states choose to assist, more or less, one side – are based on the contemporary international law. The realities of international politics are mirrored in the states' rules and practices during international armed conflicts. Because of the modern *ius ad bellum*, third-party states to a conflict have the option either to apply the law of neutrality or to take an intermediate position between neutrality and belligerency.[28] This option operates when SC does not take enforcement measures and does not identify the aggressor state. The modern *ius ad bellum* is based on the distinction between aggression and self-defence; this results from the UN rules regarding the illegality of resorting to force in inter-states relations except for the cases of self-defence. These rules are *ius cogens* – that is, they do not allow for conventional or customary derogations. Thus, the necessity to distinguish between the aggressor and the victim of the aggression has inevitable consequences for the position of the third-party states. When the SC does not function under Chapter VII, the third-party states have the right, not the obligation (maybe

a moral one) to discriminate the aggressor state and to assist the victim state in different ways such as providing for economic help and subsidies for the victim, while suspending financial and other economic relations with the aggressor.

But there is no violation of international law if a third-party state applies the law of neutrality based on its own safety or other considerations of political nature. Between the non-belligerents and the belligerent discriminated by them, the general law of peace would operate. Using the force, under the law of neutrality, against a third-party state for the reason that the latter assisted the enemy would be a violation of the international law because, as I stated above, the rules enshrined in the UN Charter are *ius cogens*.

However, it is questionable whether states are entitled under art. 51 to use the force against a non-participant/third-party state on the basis that the latter permits the hostile military units to transit its national land or air or, furthermore, that the national land, air, and/or sea is used as a base of attack. It can also be imagined a case in which a non-participant state allows for conscription on its territory for the military purpose of a state part to an armed conflict. Would the other state, part to the armed conflict, be entitled to threat or to use the force under art. 51 against the non-participant state? In all these questionable stances, the states part to an armed conflict would use force only based on the self-defence principle; the closeness to the neutrality law is only a matter of coincidence, not a legal base to justify the act of using the force or of threatening with force.[29]

The optional feature of neutrality in the contemporary international law raises some problems: first, whether the international community have already developed or is in the course of developing new types of legal obligations that operate during armed conflicts, not only for neutrals but also for non-belligerents (quasi neutrals); second, the international lawyers have still to explore the issue of applying the rules of neutrality in international armed conflicts that are not formalized and recognized states of war (non-war situations).

The non-belligerents are the states that do not want to apply the neutrality obligations of impartiality, but that want to be free to decide the degree to which they assist or help one of the parties in the armed conflict, providing that they do not participate military in the conflict. We have already seen how S.C. can force the creation of lawful obligations for non-belligerents as well as for neutrals. This is not the case when the SC does not act towards authorizing enforcement actions against the illegal use of force or, at least, towards indicating the state that breaks the international peace. In the latter situation, the non-participants to the conflict would be neutrals in the lawful sense or non-belligerents as an intermediate position between neutrality and belligerency. But assisting a state, part to an armed conflict, only on the bases of art. 51, makes way for abuses, especially when both sides claim the right to use the force under art. 51. Moreover, the possibility of being biased towards one side does not help a peaceful resolution, but hamper humanitarian disasters caused by war. The rules governing relations between belligerents have a fundamental humanitarian function that is linked with the modern trend toward the protection of human rights. Neutrals and non-belligerents have important roles as 'protecting powers' under the Geneva Conventions and the First Additional Protocol[30] that states in art. 2 (c) that ' "Protecting Power" means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol.' New legal obligations modify the neutrality law and bring the non-belligerency close to a lawful status based on the SC Resolution 612[31] about the Iraq-Iran War and on the 1993 Paris Chemical Weapons Convention[32]. Both legal sources make compulsory for third-party neutrals or other states not part to an armed conflict to prohibit and to stop the transfer of chemical weapons to the belligerents. Banning the transfers of some types of weapons in any direction is a new kind of obligations in the international law of

neutrality. Moreover, it should be noted that art. 7 of both Hague Conventions are clearly out-of-date because the reality has changed. At the beginning of the twentieth century, the governments engaged less in the trade of war materials and in manufacture; at present, they exercise more or less strict control over the export of arms and ammunition even if their manufacture was left in the hands of the private enterprise. In the present international community, there is a growing interest to hinder the spread of weapons of mass destruction and their afferent technologies. In time of armed conflicts among states, prohibiting the export of war material for both sides and binding all non-participants would be a solution to stop human disasters and to create conditions for beginning peace negotiations between the belligerents.

The contemporary international law allows for the distinction between impartial neutrality and quasi neutrality. If the application of the neutrality law is an option, then the issue of when these rules operate becomes prominent. When neutrality was the uniquely accepted status of non-participation under the law of Hague, it operated in relation to the existence of a formal state of war after a declaration of war, an ultimatum, or an implicit *animus belli* from the part of at least one state. The modern law of armed conflicts came into existence in all cases of armed conflicts under the law of Geneva. This is not the case of neutrality that, as I put above, depends on the existence of a formal state of war. But the practice of states shows, on the one hand, that states do not recognize the formal status of war when there is an armed conflict among them and, on the other hand, that third-party states maintain the optional status of the impartial neutrality whenever the state of war is existent or not. Nevertheless, there should not be drawn the conclusion that neutrality can be applied discretionary. The legal scholars show, based on the recent states' practices of armed conflicts, that neutrality is applied in time of 'actual military fighting of a certain intensity and magnitude between forces of at least two states – that is defined as the *state of generalized hostilities*."[33] The Iraq-Iran War and the Falkland War confirmed that the existence of a formal state of war is irrelevant both for the operability of the neutrality law and as a condition of materializing the belligerent rights, that is, imposing a contraband list under the law of prize against trade between third-party states and enemies, for example the Israel-Egypt War in 1948 (see the prize court at Alexandria) and the Kashmir War in 1965. It should be stressed that the example of states that call for the belligerent rights based on a state of war are rare after World War II and the 1965 case is the last one. In conclusion, when an armed conflict emerges among states, third-party states should determine when the conflict reaches the level of actual generalized hostilities or at least if there is an imminent intention of this kind of conflict, for example the Falkland Islands War.

Not only the neutrality in time of an armed conflict altered from the traditional framework but also the permanent neutrality. During the Cold War it was a generally accepted requirement for some states to choose a strategic policy outside the two rival blocks. Yet the legal scholars disputed on the compatibility of the permanent neutrality and the UN system.[34]

The general trend after World War II increased the number of non-alignment cases instead of that of legal permanent neutrality cases. Excepting Austria, the other neutrals that appeared did not define their status in international legal terms. The experiment of the neutral Indochina states was a failure because there were no important state-actors that could or wanted to warrant effectively this status, and also because of the instability of the region and of the internal weakness of the new states. In Europe, the neutrals continued to be Switzerland, Sweden, Ireland, Austria, and Finland. No matter how these states have defined their status, in legal or not legal terms, they have in common the policy of non-participation in collective defence agreements.[35] But securing the non-participation in international armed conflicts does not automatically mean that these states could perform the impartial neutrality in all the

armed conflicts that occur in the international society. The real change of the international environment that affected the permanent neutrality is the emergence of the link between international trade and security issues of political and even military nature. This change is emphasized especially in Europe, where the process of socio-political and economic integration into the European Community and, later, the European Union produced a domestic tension for the neutral states between the policy of traditional neutrality and the perspective of economic marginality. Even during the Cold War, neutrals, excepting Finland, became increasingly dependent on the US export of high technologies. This ran in parallel with the increasing economic interdependence with the EC states.[36]

At the end of the 1980s, decision-makers in the European neutral states began considering a compromise that would make neutrality compatible with the EC member status. Encouraging was the lack of compulsory collective defence agreement for the members of the EC/UE and the precedent of neutral Ireland, part of the EC from 1973. The end of the Cold War meant another positive condition for the neutrals' integration within the European system. In 1995, Austria, Finland, and Sweden entered the EU. [37] The Swiss citizens chose to be outside of the EU and accepted the UN membership only in 2002. Essential in the Swiss case is the national identity that has been strongly shaped by three fundamental political institutions; neutrality is one of them, along federalism and direct democracy.[38] Neutrality plays also an important role in defining the national identity in Sweden. In Austria and Finland, citizens are attached to this policy although this policy is relatively recent, after War World II, and it is connected at roots with the conditions emerged from the Cold War context in Europe. In the post-Cold War international environment, the European neutral states have the effective right (not only the theoretical one) and the will to play an active collective security role in both global and European arenas. At present, the 'European Security and Defence Policy' drafted by the EU Common Foreign and Security Policy does not imply a collective defence alliance but it implies participation in crises management, peacekeeping, peace-enforcement, and humanitarian operations, known as the Petersberg Tasks. The EU neutrals participate in the CESDP and in the European Rapid Reaction Force that is the military tool intended to resolve the military operations enshrined above.[39]

It can be considered that neutrality for the EU countries begins to be a political fiction or, at least, a policy that deviates substantially from the hypothetical possibility of maintaining an independent and impartial status of neutrality in many cases of armed conflicts across international boundaries.[40] This consideration stems from the following arguments.

First, participating with military units in management crises or peacekeeping operations means a high possibility of being entangled in an international armed conflict. The troops sent in a country for a peace-support mission can be attacked by one side of the civil war, so that the neutrals would be involved in an international armed conflict along other EU states that are part of WEU and NATO. This exposure to war situations is a clear deviation from the essence of a strategic option of a state to avoid participation in an armed conflict.

Second, the practical meaning of the permanent neutrality in Europe is absent. There are no wars and it is hardly possible to conceive of a war between EU member states or even member states and non-member states. There are no hypothetical military threats in the geographical proximity of the EU neutrals, especially in Ireland or Sweden cases; the lack of real threats is broadly linked with the absence of a potential aggressor from a military alliance, as it was the case in the Cold War period. Then, neutrality represented the way to secure independence and territorial integrity; now these two elements are not threatened anymore in the European context. Yet some scholars warn that we cannot predict the future; thus, it is wiser to prevent the entanglement in armed conflicts and to apply the neutrality in relation to geographical

remote armed conflicts. The counter-arguments affirm that neutrals will have to deal with an increasing process of strengthening the political solidarity among the EU states in foreign affairs; this results naturally from the increase of socio-economic and security interdependence in Europe.

Besides these two issues, there can be added a third one: concerning the defence, the EU neutrals are not involved (WEU is a different body from the EU), but the possibility of applying impartial neutrality in case of aggression against an EU member is almost inexistent. It is hard to believe that neutral governments would not support politically and economic a fellow EU state which is attacked. For this situation, there is a precedent in the Falkland War case. Evidently, this example is not absolute; history is not like physics experiments, reproducible in similar conditions. However, this is the only example in which the EC/EU territory was attacked and invaded by another state. In that time only Ireland was neutral in the EC and it sustained and applied the EC sanctions against Argentina.[41] This deviation from the neutrality law was based only on the EC solidarity in contexts where the SC did not function properly and did not formulate sanctions under art.41 (see SC Resolution 512). This leads to the conclusion that the membership of the neutral states in the EU renders almost impossible the application of impartial neutrality; it can be imagined a status of quasi neutrality or, in other words, an intermediary position between neutrality and belligerence favouring the other EU member states in cases of defence. The quasi neutrality of the European neutrals is expected even in cases of dysfunctions of the SC or before the SC takes sanction measures against the aggressor state.

Conclusions

As long as international armed conflicts exist, the interests of states to be outside of this kind of conflicts will also exist. The state practice of post-War World II setting shows a variety of attitudes of the third-party states towards an international armed conflict that can be categorized under the concepts of impartial neutrality and quasi neutrality.

The concept of impartial neutrality stems from the legal norms enshrined in the 1907 Hague Conventions. The concept of quasi neutrality is not based on multilateral treaties, but results from the contemporary international law principles, in particular from the modern *ius ad bellum* that distinguishes between the aggressor state and the victim of the aggression. Thus, when the SC takes sanction measures against a state that breaks the international peace and attacks a state, the quasi neutrality becomes compulsory for or legally enforceable against the neutral states that do not accept the sanctions related to the aggressor state. But quasi neutrality becomes optional as impartial neutrality when the SC does not take sanction measures. In the later case, most of the legal literature does not consider quasi neutrality as part of the international law but only as a policy of non-belligerence. This is part of a broader problem related to the question of how, in what specific conditions, and when a state practice becomes part of the international customary law. In other words, how the dynamic of international relations is connected with the public international law.

This intricate issue arises from the conflict of interests between third-party states and those states part of the armed conflict. The conflicts arise from the belligerent self-defence and belligerents-neutrals trade relations. The most important and recent guide in this issues is the *San Remo Manual on Armed Conflict at Sea*, published in 1994, a non-official, legal codification made under the auspices of the Institute of Humanitarian Law by a group of non-governmental experts including naval scholars, as well as lawyers.[42] This codification is primarily designed to restate and update the law on the conduct of armed conflict at sea and contains many provisions bearing on the rights and duties of neutrals and belligerents. It updates also the

concept of neutrality in case of armed conflicts in which the SC takes action (art. 7-9). It is enshrined the right of self-defence that the belligerent has under two conditions: (1) the neutral state fails to cease the violation of its neutral waters; (2) the violation of the state neutrality by the belligerent constitutes a serious and immediate threat to the security of the opposing belligerent (art. 22). Concerning the economic dimension, the *San Remo Manual* regulates the norms applied to neutral vessel and civil aircraft (art. 67-71; about visit and search art. 118-136), the norms regarding the blockade (art. 93-104), and the capture of neutral vessels, civil aircraft, and goods (art. 146-158). This codification confirms that even if the optional feature of the neutrality law is generally accepted, at least when the SC does not function properly, third-party states and the parts to the conflict need a set of norms that regulate the rights and duties in self-defence and the economic components of their relations.

The future monitoring of third-party states practices in international armed conflicts will focus on the will and possibilities of the state-actors to play certain roles related to the conditions of the international environment. The future trends may take a different direction from what the scholars have codified in 1994. Yet, non-participation, in the contemporary international law, will still imply the choice between impartial neutrality and quasi neutrality.

NOTES:

[1] G. Schwarzenberger, *A Manual of International Law*, Clarendon Press, London, 1967, p. 84; S. C. Neff, *The Rights and Duties of Neutrals. A general History,* Juris Publishing, Manchester University Press, Manchester, 2000, p. 1.

[2] M. Elizabeth, *Dictionary of Law,* Oxford University Press, Oxford, 2002, p. 653; see also G. Evans and J. Newnham, *The Penguin Dictionary of International Relations*, Penguin Group, 1998, p. 336.

[3] See art. 9 from the *Hague Convention Respecting the Rights and Duties of the Neutral Powers in Naval War* (the Vth Convention): 'Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents. A neutral Power must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.' See also art. 7 and 8, and art. 9 from the *Hague Convention Concerning the Rights and Duties of Neutral Powers in Naval War* (the XIIIth Convention): 'A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.'

[4] See art. 5 from the Hague Vth Convention: 'A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory. It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory'; and art. 8 from the XIIIth Convention: 'A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war.'

[5] This means that a right of a neutral state corresponds to a duty of a belligerent, and a right of a belligerent corresponds to a duty of a neutral. See I. A. Shearer (ed.), *Starkes' International Law,* Butterworth, London, Boston, 1994, p. 526-527. The rights and duties of neutrals and belligerents are differently related to land, sea, and air warfare. For further details about rules of neutrality see H. McCoubrey and N.D. White, *International Law and Armed Conflict,* Aldershot, Brookfield, Ashgate, 1992: about neutrality in land warfare (p. 301-302), about neutrality in armed conflicts at sea (p. 302-307), about neutrality in air warfare (p. 308-311). See also M. S. McDougal and F. P. Feliciano (eds), *The International Law of War*, New Haven Press, New Haven/ Martinus Nijhoff Publishers, Doordrech, 1994, p. 435-519.

[6] The Hague Conventions are still in force today for most powers: United States, Russia, United Kingdom, France, and Japan. Further details in F. Deak, 'Neutrality Revisited', in *Transnational Law in a Changing Society*, ed. by W. Friedman, L Henkin, and O. Lissitzyn, Columbia University Press, New York, London, 1972.

[7] I. A. Shearer, *op.cit.* p.,477-480.

[8] Lauterpacht (ed.), *International Law a Treatise. Disputes War and Neutrality by L. Oppenheim*, Longmans Green & Co., London, New York, Toronto, 1955, p. 625; A. P. Rubin, 'The Concept of Neutrality in International Law'. in *Neutrality-Changing Concepts and Practice* ed. by A. T. Leonhard, University Press of America, Lanham, New York, London, 1988.

[1] 'Lois et usages de la neutralité d'apres le droit international conventionnel et coutumier des Étas civilisés', vol I, 1898 quoted in W. G. Grewe, *The Epochs of International Law*, de Gruyter, Berlin, New York, 2000, p.535

[2] See a general account on this topic in A. C. Arend, *Legal Rules and International Society,* Oxford University Press, Oxford, 1999.

[3] See, for example, the Pyrenees Treaty (1656), the Utrecht Treaty (1713); further details in Neff, *op.cit.*, p. 27-38.

[4] The armed neutrality at sea, an idea advanced by Russia during the War of American Independence, was a method of protecting commerce. The idea of a League of Armed Neutrality was supported by Denmark and Sweden (1780), and later by Prussia, Austria (1782), and Portugal (1783); France and Spain recognized the principle, but Britain prevented Holland from joining the league by declaring war on the Dutch. The league demanded (1) free passage of neutral ships from port to port and along the coasts of combatants; (2) freedom of enemy goods in neutral ships *(le pavillon couvre la marchandise),* except for contraband; (3) definition of blockade (nominal "paper" blockade not sufficient; a blockade, to be legal, must be effective). The Second League of Armed Neutrality in December, 1800, between Sweden, Denmark, Russia, and Prussia was based on the same principles as the Armed Neutrality of 1780, but with further guaranties against capture under blockade, in the form of a provision for previous warning on the part of the war-ships on guard, and also of a prohibition against the searching of trading vessels under convoy. see Neff, *op.cit.*

[5] Further details on codification conferences and law-making treaties in Grewe, *op.cit.* p.512-517, and Arend, *op.cit.* p.46-47

[6] See the Declaration of Paris (1856) preamble: 'The Plenipotentiaries who signed the Treaty of Paris of March assembled in conference, considering: That maritime law in time of war has long been the subject of deplorable disputes; That the uncertainty of the law and of the duties in such a matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts; that it is consequently advantageous to establish a uniform doctrine on so important a point; That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated than by seeking to introduce into International relations fixed principles in this respect.'

[15] E. Bonjour, *La neutralité Suisse: synthèse de son histoire,* Edition de Baconnere, Neuchatel, 1979.

[16] O. Elgstrom, 'Do Images Matter? The Making of Swedish neutrality 1834 and 1853', in *Cooperation and Conflict,* vol 35 (3), 2000.

[17] The 'Declaration Concerning the Laws of Naval War' (London, 1909) was never enforced; see further details in Neff, *op.cit.,* p. 136-143.

[18] E. Karsh, *Neutrality and Small States,* Routledge, London, New York, 1988, p. 44-60.

[19] '...severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not and The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.'

[20] See paragraphs 1 and 2 from SC Res. 660.

[21] See paragraph 3 from SC Res. 660.

[22] See paragraphs 3, 4, 5, 6, 7, 8, and 9 from SC Res. 661.

[23] Shearer, *op.cit.*, p. 526.

[24] This relates to the refueling of the American warplanes on their territory; when the president of Austria (a permanent neutral state) stated that '[w]hen the members of the United Nations act against an aggressor, there can be no question of neutrality, only of solidarity'; see Neff, *op.cit.*, p. 193.

[25] Further details on the implied authorization of force by the SC in C. Gray, 'From Unity to Polarization: International Law and the Use of Force against Iraq', in EJIL, vol. 13 (1), 2002.

[26] The American intervention in Cambodia occurred during the Vietnam War and began in 1969 with the systematic bombing of North Vietnamese bases in Cambodian territory; in 1970 a large-scale intervention of the American and South Vietnamese ground forces was launched. Some of justifications were based on the neutral state's wrongful act of being insufficiently diligent in preventing the violation of its neutrality by the other side. However, the principal justification of the US was the right of self-help in self-defence; see also Neff, *op.cit.*, p. 211-212.

[27] See F. A. Boyle, *International Crisis and Neutrality: U.S. Foreign Policy Toward the Iraq-Iran War,* in Leonhard, *op. cit.*

[28] A. Gioia 'Neutrality and Non-Belligerency', in *International Economic Law and Armed Conflict* ed. by H. G. Post, Martinus Nijhoff Publishers, Boston, Doordrecht, 1994.

[29] See McCoubrey and White's opinion *op.cit.*, p.312: '...at worst a breach of neutrality weather taking the form of violation by a belligerent or of intervention by neutral, might itself became a cause of conflict through the exercise of rights preserved by article 51 of the United Nation Charter.'

[30] Articles concerning neutrals and non-belligerents in the 1949 Geneva Conventions and the 1977 First Additional Protocol: I Convention art. 4, 8, 10, 11 27, 3b, 37, 43, II Convention art. 5, 8, 10, 11, 15, 16, 17, 21, 25, 31, 32, 38, 40, 43, III Convention art. 4, 8, 10, 11, 109, 110, 111, 114, 115, 116, IV Convention art. 4, 9, 11, 12, 12, 24, 25, 36, 132, 140, and the I Additional Protocol art. 2, 9, 19, 22, 30, 31, 37, 39, 64.

[31] See Resolution 612 paragraph 4.

[32] Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction.

[33] G. C. Petrochilos, 'The Relevance of the Concept of War and Armed Conflict to the Law of Neutrality', in *Vanderbilt Journal of Transnational Law*, vol. 31, 1998.

[34] Deak, *op.cit.*

[35] H. Neuhold, *The Neutral States of Europe Similarities and Differences,* in Leonhard, *op. cit.*

[36] B. McSweeny, 'The European Neutrals and the European Community', in *Journal of Peace Research*, vol. 25, (3), 1988.

[37] Ch. Agius 'Reinventing Neutrality-The Case of Austria, Finland, Sweden and the European Union', in *Europe Rethinking the Boundaires* ed by Ph. Murray, L. Halmes, Ashgate, Brookfield USA, Singapore, Sidney, 2000.

[38] Th. Christi, Al. H. Trechsel, 'Joining the EU? Explaining Public Opinion in Switzerland', in *European Union Politics*, vol.3 (4), 2000.

[39] For the details concerning the ESDP see R. A. Wessel 'The State of Affairs in EU Security and Defence Policy. The Breakthrough in the Treaty of Nice', in *Journal of Conflict&Security Law*, vol. 83 (2), 2003.

[40] D. Keohane considers Ireland as an active security actor, more as a non-alignment country than a neutral one, see 'Realigning Neutrality? Irish Defence Policy and the EU', Occasional Papers, Institute for Security Studies of WEU, 2001, www.iss-eu.org/occasion/occ24.html.

[41] Further details on the European quasi neutral states, see S. Stavridis and Ch. Hill (eds), *Domestic Sources of Foreign Policy. West European Reactions to the Falklands Conflict,* Berg Publishers Limited, Oxford, Washington D.C., 1996 and on Ireland see B. Tora 'The Internal Dissenter (II): Ireland', in Stavridis and Hill, *op.cit.*

[42] L. Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea,* Cambridge University Press, Cambridge, 1995.

The Response of the European Union to September 11, 2001

The European Reaction Capacity: How much Still National, how much Already Communitarian

Emilia Diana Mohan

Introduction

On September 10, 2001, to humble United States by attacking the Twin Towers of the World Trade Center in New York was considered as *the* impossible. From the next day forward, this act of violence[1] became a symbol of fear, weakness, and vulnerability to a threat infecting and affecting us all. It shattered the illusion of a more cooperative world, that was expected to be born with the end of the Cold War, and granted legitimacy to new attitudes of contempt and loathing towards a different civilization. This new threat[2], coming from a different cultural dimension, rests more on resentments against the post-modern cosmopolitanism and the relational structures proposed by the Western world, than on high tech weapons or state power. As such, the most horrendously affected by 9.11.2001 was the common normative architecture of the Western culture, and in particular that developed within the Euro-Atlantic community of states[3].

The foundation and strength of this special Euro-Atlantic relation consists, mainly, in its intention to create an institutional area capable to usefully explore concrete cooperation and, per se, to smooth the way to peace. Throughout the Cold War, the Euro-Atlantic partnership aimed at confronting the existing challenges of the bi-polar world. In order to successfully face and carry out their obligations, Western states developed a system that locked them in, psychologically and operationally.[4] The most important feature of this system was the common identification and, with an equal intensity, of the then existing threat – the Soviet Union and its allies. Designed to enable the participant nations, and their friends, to cooperatively deal with common threats, this community transformed after 9.11 into a victim of a bunch of so called - terrorists. With the holistic feature of the new terrorism, mutual assistance between the allies became the main weapon of the 'war', and emphasis on the already solidified Euro-Atlantic relation, a solution in strengthening national and communitarian security. United into a front, their reaction to the attacks of 9.11. appear as the translation into practice of a community of values strongly compatible in their goals and complementary in their methods.

This paper intends to examine the reaction of the European Union, as a supposed coherent body of action, to the events of 9.11. 2001. By this, it intends to challenge the consistency of EU's foreign policy, as one of the main pillars of the Euro-Atlantic relation; more precisely, it tries to analyze if Europe is capable to articulate a 'common voice' within the Euro-Atlantic framework. There are two main possible results: 1. a strongly articulated European voice - if intergovernmental and national EU reactions coincide; 2. a underdeveloped European voice - if intergovernmental and national reactions fluctuate. This second case opens the floor to discussion about the Achilles' heel of EFP: what makes the EU vulnerable when it comes about accomplishing the official statements initially declared. What determined the collapse of the EU initial stage of reaction, more precisely, the

strongly declared support for a coalition to act in concert with the US. *This is the main problem this analysis intends to address.*

The present paper is structured as follows. The first part will present the way the paper is organized and offers a framework for conceptualizing the relevant theoretical notions that will be used in underlying the central problem depicted by this paper. The second part charts trends and patterns of EU's reaction stages to the events of 9.11, laying emphasis on the national, intergovernmental and individual facets of the response. The last part includes a revealing analysis that tries to explain what determined such reactions and how this contributed to the collapse of the initial European coalition.

1. Theoretical Background

The Logic of the Argument

Under the intention of reacting terrorism, the responses of the Euro-Atlantic community must be understood as a feedback of a civilization trying to protect its own values. According to this perception, the responses appear as an expression of unity and broad agreement about what constituted 'the threat'. The exercise of this paper is to explain what determined the specific responses of the European member states, considering that the main threat stayed the same. To contribute to the accuracy of the analysis the paper will have the following structure. This part offers a brief presentation of the way the paper is organized and deals with the theoretical background required for the elaboration of the central argument. The instruments used in the construction of the research question are independent, dependent and intervening variables. The independent variable - *the new terrorism* - influences directly the dependent variable - *the reaction of the EU*, while the intervening/backstage variables shape the way the independent variable affects the dependent one (in our case, the reaction of the EU to the events of 9.11), by offering explanations to the main specific features of the final outcome. Having this said, the hypothesis employed in this paper intends to identify the specificity of the European reaction to 9.11 and to explain the determinant factors of great impact.

Conceptual Setting

Explanatory factors of the post-9.11. European reaction are offered, in part, by the background variables. Even if the official reaction of the European Union was determined by the events of 9.11, the causes undermining the response were prior to the terrorist incident. This is one reason why the background variables are regarded as constructive starting points in analyzing the thorny problems of the European reaction. This section reviews the relevant theoretical notions that will be used in underlying the central problem depicted by this paper. More accurately, it aims to explain the EU reactions within the context of various factors, initially regarded as marginal or peripheral, factors that could pose a tremendous impact over the evolution and final reaction the European community of states had. The notions that serve as a good starting point for the present analysis are *the Euro-Atlantic Relation (*as the main framework of the reaction*), the European Foreign Policy (*as the specific European framework of the reaction*), the New Terrorism after 9.11 and Experience with Terrorism within the European Union (*as the main challenge of the reaction*).*

a. The Euro-Atlantic Relation

There was a broad agreement, that the events of 9.11. had a whiplash effect on the Euro-Atlantic community. The changes brought by the appearance of this new kind of terrorism had an immense impact on the way the states, within this community, reacted and understood to make co-operation operational. Build on one of the strongest community of interests[5], the Euro-Atlantic relation was expected to be highly coherent to the negative

impulse of 9.11. Euro-Atlantics were expected to pool their minds for the betterment of a consensus-creating co-operation and to appear as a united Western front, strongly determined to oppose 'the enemy'.

Despite being one of the most important strategic relationship existing, the Euro-Atlantic relation is still not as immune to corrosion or inadequate co-operation as it might seem. With the end of the Cold War, threats to national security became diffuse and diverse, highlighting the inability of the Euro-Atlantic community to forge a common vision among its members, about what the best solution for the entire community would be, solutions that should not be driven by parochial national interests. Terrorism at 9.11. contributed to the widening of the already existing transatlantic gap[6], as well as to the tendency of estrangement between the two parts of the transatlantic relation. Reasons for such an outcome exist on both sides. More and more, the Europeans were concerned with the rising American "hyper-power", their growing tendency towards unilateralism and a disregard for international laws and institutions.[7] On the other side, the Americans were less and less confident in the strategic relevance and military power possessed by Europe, within the process of preserving the American way of understanding international security[8].

Per se, the future of the Euro-Atlantic Relation can be mainly twofold: 1. Transatlantic drift - that is essentially based on the premise that the international order underpinning the Cold War will be eroded over time. Instead of a mature EAR, Europe will try to do its best to reinvent the security concepts and to readapt it to the European necessities. This will determine US to slip into indifference to European security issues and concentrate its energies upon its autonomous rule. The current preoccupations with a shifting attitudes of the US towards the international institutions can be seen as a sign that US is maybe too big for the future positive membership in any international organization. More precisely, the power of US can destabilize any international organization that might contain it. 2. Increased transatlantic participation institutional change might determine a convergence between EU and NATO membership, creating the proper space for a transatlantic defense and security identity[9].

b. European Foreign Policy

After defining the main framework where the European reaction took place, special attention must be given to the particular context of the European reaction. America being one state, one voice, the Western coalition against terrorism could be weakened by EU's inability to bow to the communitarian interest, as prevalent to self-interested, me-first attitudes. As one of the most significant projects in post-1945 Europe, and as one of the most advanced example of institutional cooperation between countries in the world today[10], EU's foreign reaction was expected to constitute a model of unity and consistency within the more general Euro-Atlantic framework. Constructed to be 'one body of reaction, to have one voice' on the international arena, the EU member states, as initiators of this co-operative organization, are equally responsible for their ability or inability to task effectively. The very special E.U. institutional architecture and its pro-active character[11], reasonably complicates the problem of articulating foreign reactions between the member states. The very special character of foreign policy also complicates sharing external reaction. First, this kind of foreign policy is not among the most democratic forms of strategy and secondly, it touches the very delicate problem of 'the national interest'. Both problems are having different characteristics within the European communitarian environment. In very broad terms[12], EPF is defined as the relation of the EU with the outside world, in an attempt to defend the European interests, and comprises a combination of actions of the EU and of the individual Member states, as long as this combination stays coherent and convergent.[13]

c. The New Terrorism After 9.11 and European Experience with Terrorism

Whatever the problems of the EFP or within the EAR were, the events of 9.11 definitely challenged both of them. The essence of this 'provocation' is the new threat, the new terrorism. With the events of 9.11 the classical concept of terrorism, extremely difficult to be conceptualized anyway, became almost unmanageable as a notion and as a reality. In an attempt to define the old concept of terrorism, one can observe that the words most frequently used to describe that type of terrorism were violence, political aim, fear, importance of targets and civilian victims. The new terrorism is dramatically different from the one we use to know – it is global, decentralized, it uses new techniques and has new targets, it is oriented towards mass causalities and destructions, it launches a new kind of terror, based on unpredictability, lack of effective demands and irrational movements, it uses unconventional, biological, chemical and informational weapons. All these characteristics point out that, if the old terrorism was oriented against the institution of the state and was used for the achievement of certain political objectives, the new terrorism threatens all societal sectors and infrastructures.[14]

European countries experienced a relatively high level of national terrorism as compared with the US. This is demonstrated by two facts: the existence of national legislation in six of the European states (see Fig. 2) and the existence of specialized national bodies to react when this kind of situations occur. The functionality of these terrorist-preventive tools is strongly challenged in the post 9.11 framework, more or less because of the 1. Different national past experiences with domestic terrorism and 2. Distinct national institutional structures functioning on different intervention systems. Still, legislation about terrorism exists also at the European level, elaborated by the *Council of Europe, in the European Convention on the Suppression of Terrorism*[15], or by the *European Union*, in the Treaty of the European Union[16].

2. Stages of Reaction

The reaction of the Europeans at the events of the 9.11 must be understood in correlation with the developments of EAR and with the present features of EFP. Most of the analysts, researching this problem, reached the conclusion that 9.11 contributed to the widening of the already 'spacious' transatlantic relation. Not all of them spend enough time in explaining why. The main task of this chapter is to analyze the various stages the post-9.11 EU reaction. There are three main stages, determining three kinds of reactions: 1. A first, inter-governmental stage, regarded as the result of previous consultations between EU's national representatives. This is the so-called official reaction, occurring within the EU framework. 2.The second, national-based stage consists of national - political and diplomatic - contacts between the European states and the US government. This is the bi-lateral reaction, happening parallel to the EU context. 3.The last phase is taking place at the individual level, and constitutes the reaction of the European public opinion. It should be noticed that the three stages of reaction are not following a strict chronological order; on the contrary, they are intermingled, this making the analysis of the EU's reaction to 9.11 even more interesting.

2.1 The Intergovernmental Stage

The official EU reaction had a pre-stage that represents the climax moment of the transatlantic comity. This moment was marked by NATO's (and especially the 11 European states part of NATO) rapid response to offer protection to the US, under Article V. The reaction in Washington left few room to the Alliance (and as such to its European members) to prove any usefulness. Immediately after the US refusal to wage the war against terrorism within the NATO framework, the intergovernmental stage of

reaction emerges. This European reaction, the alleged official stage, has two phases: 1. a declarative phase and 2. a normative phase.

The declarative phase consists of official statements made by the Europeans, concerning their effective solidarity with the US. Only 36 hours after the attack, formal statements have been made by President Prodi, by the High Representative, the president of the European Parliament. They appeared as a common manifestation of the European willingness and capacity to react together to the threats of terrorism and to support the US: 'continued solidarity with the US, determination in the fight against terrorism and commitment to the security of all citizens in the EU, efforts to tackle root causes of terrorism and contributions to better understanding between civilizations[17].

In the name of the same solidarity, a range of concrete measures was taken. On the 12th of September the European Commission Civil Protection system was activated to offer assistance to victims in the US. In the same day, a Special Council Meeting is held, with the participation of MS representatives and headed by Solana and Prodi. The Council asked its Justice and Home Affairs and Transport compositions to take all the necessary measures as soon as possible to maintain the highest level of security, particularly in the field of air transport, and any other measure needed to combat terrorism and prevent terrorist attacks. It has also requested the Presidency, the High Representative for the Common Foreign and Security Policy and the Commission to submit, as soon as possible, a report on concrete measures that may be recommended to speed up the implementation and the strengthening of the operational instruments of both the Common Foreign and Security Policy and Justice and Home Affairs.

The second phase of the intergovernmental stage of reaction consists in the norms that the European Union officially adopted after 9.11. The most important two documents are those dealing with the elaboration of a common definition to terrorism and with the issues of the European arrest warrant. The new, common definition of terrorism defines as terrorist offences '*the following list of intentional Acts which, given their nature and context, may seriously damage a country or an international organization, as defined as offences under national law, where committed with the aim of:*

(i) *seriously intimidating a population,*

(ii) unduly compelling a Government or International organization to perform or abstain from performing any act,

(iii) *seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization*

...murder; bodily injuries; kidnapping; hostage taking; threats; extortion; theft; robbery; fabrication, possession, acquisition, transport or supply of weapons or explosives; unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property...

...transport system, an infrastructure facility, including an information system, a fixed platform located on a continental shelf, a public place or private property likely to endanger human life or result in major economic loss.'

The European arrest warrant refers to people wanted for any of the 32 above specified crimes - ranging form terrorism to paedophilia – that could be arrested in any of the EU states. It is aimed at replacing extradition with a system of simple surrender on the basis of mutual recognition of 'European' arrest warrant inside the EU.

2.2 The National-Based Stage

The second stage of reaction comprises the various bi-lateral responses of the national states of the European Union. The European bi-lateral responses to U.S. are parallel and contradictory to the intergovernmental EU official policies. The first European visit to Washington after 9.11 was that of the French President Jacques Chirac, fallowed by that of the British Prime Minister Tony Blair, who was invited to attend a joint session of the Congress convened to hear President Bush's speech.

During this official meetings, divergent reaction were appearing in France, where the Minister Lionel Jospin issued statements

contrasting with Chirac's unconditional support for the Americans, and also in Britain, where the unconditional support given by the Prime Minister Tony Blair to the U.S. was also criticized and became a subject of internal debate. The Belgian Foreign Minister Louis Michel was also complaining that Mr Blair's speeches sound "too aggressive" and detached from the European common voice.

The first official visit in the USA, on September 27, of the European Commission's President Romano Prodi and of the Belgian Prime Minister Guy Verhofstat, was not even mentioned in the Washington press. On a different front, the Italian Prime Minister Berlusconi was making remarks on the "superiority" of the West over Islam simultaneously with the official visit of the EU 'troika' in the Arab region. Germany, in an desperate attempt to save the situation, was calling for European unity and stressing the role of the EU in security cooperation: "European nations must stop their squabbling and petty jealousies and unite to fight against terrorism".

2.3 The Individual Stage

The last stage of the European reaction is that of the European citizens. It is more a counter-reaction to the policies implemented as a response to the events of 9. Most of the reactions were connected with the 'emergency' reactions elaborated by the EU: the European arrest warrant, the common definition of terrorism, the exchange of information on terrorists and protestors, the surveillance of telecommunications, the 47 demands for EU-US cooperation against terrorism.

Public critics considered that the emerging legislation tends to blur the distinction between terrorism and resistance to oppression or political dissent. As such, the new terrorists could also be protesters and refugees, or even asylum-seekers. The new legislation against terrorism was considered to breed a culture of racism against Muslims and people with Middle Eastern appearance, regarded as enemies of 'our civilization'.

The critics also encompassed the extreme collaboration of the European Union with the US, collaboration that was focusing more on topics like crime and emigration, exchange of telecommunications information, direct exchange of personal data with Europol, the establishment of common border control policies including data on asylum-seekers and a new category of "inadmissible", that should be refused entry by the US and the EU.

3. Explaining the Reactions

This chapter tries to identify the key factors contributing to the collapse of the European coalition, by explaining the stages of the European reaction. As such, it tries to find answers to questions as: A: Why different reactions 1. within the same union, 2. to the same threat and 3. by the same players. and B. How did all this contributed to the breakdown of the initial European coalition. The questions will be addressed by focusing on the analysis of the three phases of reaction, discussed in the previous chapter, and will be constructed by observing the impact of the backstage variables - the *Euro-Atlantic Relation, the European Foreign Policy, the New Terrorism after 9.11 and Experience with Terrorism within the European Union* - over the European response stages.

3.1 The Pre-phase Factor of the Intergovernmental Phase:

The initial response of the Europeans to support the United States within the NATO framework and the immediate refusal of the Americans to accept this help, explains some hidden sides of the Euro-Atlantic relation: 1. the European wing of the Alliance has limited appeal for the U.S. because of 2. the diminished efficiency of the Europeans to participate out of area on a large scale. Being obviously excluded by the US, the European were facing a denial of their capacity to contribute as an international player to the

event. On the other side, because they were still keen to play an important role in the international crisis created by 9.11, the only valid solution they had been left with, was to articulate their voices by using the single international institution exclusively European – the European Union. There are three main motivations in this prompt initial reaction of the EU. The first is the above mentioned prestige question of the European states to play an important part in the crisis. The second is connected to the shock created by the events of the 9.11 and especially by the US weakness to prevent the catastrophe. Third, the reaction in the name of the community of shared value. As the closest ally of the United States, the Europeans, even with the risk of attracting potential terrorist attack over their states, had to place themselves under the protective umbrella of the US.

All these factors contributed to the appearance of a strong European coalition, terrified first by their incapability to react and secondly by the incapacity of the Americans not to defend the Europeans, in the case of a future attack in Europe. Later declarations coming from 'the terrorists', that Europe is not the main target of their strategies and that their policies are more a reaction to United States interventionist plans, loosened the coalition and determined the European leaders to focus more on the internal potential sources of 'terrorism' (like the Turkish community in Germany) and less on the international fight against terrorism, from an articulated European point of view.

3.2 The Intergovernmental Factor:

The first phase of the intergovernmental phase must be understood as a feedback to the shock, to a psychological terrifying situation. Even if there were some distinctive diplomatic exchanges between US and the EU, the reaction does not constitute a proof of a special solidarity and does not offer evidence of a unique response in the name of a community of values shared by US and Europe. Most of the other states (with few exceptions), outside the European Union, reacted in the same way and expressed the same kind of solidarity in front of the American tragic experience[18]. From this point of view, this part of the European reaction is not making the European coalition stronger or weaker, but just normal when compared with the other states, outside the EU. Europe was reacting as a unique voice, because the entire world was doing the same thing.

An important explanatory factor of this stage of the European reaction is the still intergovernmental[19] oriented decision making process at the level of the European foreign policy. This is directly influenced by the electoral variable; in order to represent their states at the European level, the politicians must be first elected at the national level. Here the situation becomes paradoxical, because on the one side the national politicians have to represent the 'national interest' of the people that elected him/her, but on the other side, this interest coincide with the 'national interest' of the other EU member states. In the first stage of the reaction to 9.11, the 'national interest' coincided with the 'European interest'. As various factors came into discussion – like the reaction of the public opinion for the unanimous support for the US of the EU - the gap between the national interest and the European interest became a problem, for the national ministers and for the cohesion of the initially declared European coalition.

The second phase of the intergovernmental reaction is more helpful in understanding what determined the collapse of the European coalition. The two normative innovations - the European definition of terrorism and the European arrest warrant – represent the most important evidence of why the European coalition collapsed. The reaction constitutes a proof of how unrepresentative the EFP is at the national level. Created to offer a better protection for the citizen of the Union, the two normative innovations were regarded by the Europeans as contradictory with the liberal democratic system of the Union. Critics voice that democratic culture in not simply about regular elections, but especially about diversity, information, pluralism, multiculturalism, and tolerance of peoples and their ideas. The two above mentioned measures were considered to threaten this democratic culture, first because of the way they were rushed through the EU

(Council and European Parliament) and national scrutiny, and second because of their broad content. The common definition of terrorism was accused of trying to reduce the right of the European citizens to demonstrations, protests and political dissent, in an attempt to transform Europe into a police state.

As far as the European arrest warrant is concerned, the situation was even more complicated, with reactions coming form the national (Berlusconi`s initial refusal to accept it), constitutional (Austrian, Portuguese, Danish and Greek constitutions ban transfer of nationalities to any foreign jurisdiction) and Parliamentarian (thirty-four Euro MPs from various political groups signed a procedural protest calling on the European Parliament to deliberate carefully before approving the European Arrest Warrant proposal) levels. The main idea undermining the initial European coalition was the counter-reaction of the European citizens and of the groups representing them, that the foreign policy initiated by the European Union, in tandem with the US strategy against terrorism, is not only unrepresentative, but is also threatening essential civil liberties. On the other hand, officials in states like Spain and the United Kingdom, countries suffering from domestic terrorism, were strongly supporting the implementation of the law.

3.3 The National Factor:

With the modifications accruing in the international systemic structure after the Cold War, the relation between Europe and the United States tended to experience difficulties, especially during crisis situations. The 9.11 events are just another example. The incapacity of the Europeans to articulate a single voice, during a crisis, influenced the Americans in concentrating more on finding national European allies, instead of a single European Union associate. This bi-lateral based EURO-Atlantic relation contributed to the appearance of differentiated reactions within the European Union, when it comes about partnership with USA. Differentiated behavior with the states of a Union makes a possible coalition between the member states of the Union vulnerable to disruption. The impact of EFP in articulating a coherent reaction to the crisis of 9.11, must be understood form the following perspective: EFP is in the process of formation, with the European member states still undecided about the way they should develop it. Disputes exist at the various levels, be it between the bigger states or between the smaller ones.

Frictions about the normative solutions to terrorism were just the beginning of the end for the European coalition. This bi-lateral stage offers more pictures of an still fragmented and national oriented EU, when confronted with an international crisis, as the one created by the events of 9/11. The fact that the first official visits coming from Europe were those of Jacques Chirac and Tony Blair shows a leading role of the national states in the articulation of the EFP. The problem is not that the role of the states is emphasized in the decision making process when it comes about foreign policy; what could have an destructive impact over the coherence of the European Foreign Policy, is the fact that, within this process, some states are more equal than others - the case of the pre-Ghent meeting. This was another reason why the European coalition felt apart before it could become effective. A special role in the spoiling of the European unity must be given to the nature of the Euro-Atlantic relation. It is clear that there are some more equal partners within this relation too, Great Britain being one of them. The leading role of Great Britain in the war against terrorism also contributed to the appearance of an asymmetrical relation within the European coalition and with the United States.

The asymmetric coalition became even more unbalanced, as national interest in promoting anti-terrorist laws started to differ. Europe's experience with domestic terrorism was more a destructive factor than a coalition-forming one. First, different national leaders were having different interests in promoting a European legislation for terrorism (something that should legitimize their future solution to domestic terrorist challenges). Secondly, depending on the specific national experience with terrorism, the threat stopped being regarded as one. It brought different interpretations from different national

understandings that made the final definition of terrorism extremely broad and comprising. Thirdly, the type of terrorism this definition was addressed to, even if declared to be the new terrorism, was still the traditional kind; the single difference was the fact that the new legislation was harsher then the older, already existing one.

This immediately provoked reactions from the individuals, reactions that – be it at an official level, through the voice of various NGO's or at the unofficial one, through public demonstrations – undermine the coalition and the power of the European Union to present a strong articulated voice.

3.4 The Individual Factor

On the other side one has to mention that the new type of terrorism is challenging the nature of foreign policy as such, by moving the center of gravity on the individual as the first and most important victim of the attacks. In a spiral reaction the citizen feel less and less protected by the state or by a union of states and tries to protest against those measures taken at a national or union level that could determine a farther escalation of their insecurity. That is what happened at the European individual level, too. This directly influenced the strength of the European coalition, by making the national leaders to be more focused on the internal problems and secondly, be accused of trying to use the events of 9.11, and the initial accepted reaction of solidarity, as a way to simplify the democratic process, at the national and European level. The initial coalition was based on their willingness to support the Americans and to create a protective normative structure to safeguard the European Union from future potential terrorist attacks. As such, the first was supposed to take the form of a strong coalition against terrorism within the Euro-Atlantic Relation while the second intended to create norms that should discourage the phenomenon of terrorism in Europe. The European citizens were criticizing this from two perspectives: the one of the civilian threatened by a unconditional cooperation with the US, that was determining more friction at the individual level – with the declaration of war towards Muslims, than bringing more solutions; and the one, from the point of view of the citizen that sees, in an attempt to fight terrorism, that most of his/her tools of reaction in a democratic manner are affected.

Conclusion

The heartfelt solidarity with the United States demonstrated by the European allies after the terrorist attacks on New York and the Pentagon on September 11 came as a valuable restorative to a faltering transatlantic relationship. Sabotage, surprise or shock, coming from a defuse enemy, are security issues that even the Euro-Atlantic security area is still inexperienced to elucidate effectively. September 11 increasingly underlined that there is a sense that the two sides of the Atlantic are drifting away from the lofty goals they set after World War II and during the Cold War.

United States invincibility was challenged, and Europe's security, as one of its main allies, was deeply touched. Under the spur of crisis, the European Union proved a weak reed. Expectations in Brussels that the European allies would increasingly choose to act through the European Union rather than NATO, or through bilateral relations with the United States, were swiftly confounded. These diplomatic errands were better and often more swiftly done by nation-states than by the EU, something that proves that Europe is still incapable to articulate a strong European voice. National and communitarian values correspond, but in very few domains; even then they leave a lot of room to interpretations.

September 11 increasingly underlined that there is a sense that the two sides of the Atlantic are drifting away from the lofty goals they set after World War II and during the Cold War. The relationship is not only said to be lacking coherence; it is also said to be losing its necessity, as Americans and Europeans no longer share values or even interests – and, even when they do, lose their commonalities in the increasing capabilities gap that divides them.

The events of 9.11 determined a range of issues surrounding the useful exploration of concrete co-operative means, capable to overcome the new threat of terrorism. This need of cooperation brought together the European states in a coalition strongly supporting the U.S. The terrorist attacks influenced the appearance of a coherent reaction at the level of the European Union but marked also differences, ranging form national to supranational level, reactions that determined the failure of the coalition. The present paper tries to identify the main factors that caused this failure.

The EU visibly did not matter greatly in times of urgent crisis, when the United States turned to its traditional nation-state allies and to NATO, and Europe's nation-states responded in kind. A special EU summit at Ghent, Belgium, attended by all 15 heads of government, was preceded by a private meeting of Blair, Jacques Chirac, and Schröder to discuss military support for the Americans and the strategy of the war.

Most optimists consider that, as in other times of crisis, international and internal, the European Union has accepted the lessons; with the result of taking one more step towards a deeper integration.

NOTES:

[1] On Tuesday 11 September 2001, four US commercial aircraft, on internal flights, were hijacked. Two were flown deliberately into the Twin Towers of the World Trade Center, the tallest buildings in New York City and the workplace for some 40,000 civilians. A third aircraft hit the Pentagon in Washington DC, and a fourth crashed in Pennsylvania after passengers attempted to take control from the hijackers. The attacks were later discovered to have been organized by al-Qaida, a terrorist organization based in Afghanistan.
http://www.parliament.uk/commons/lib/research/rp2001/rp01-072.pdf

[2] More information will be offered in the section The New Terrorism After 9.11

[3] This paper defines the Euro-Atlantic Community of states, the countries full members of NATO and EU, at the moment of the attack.

[4] www.ciaonet.org/wps/vap04/vap04.

[5] Promoting peace and stability, democracy and development around the world, Responding to Global Challenges, Contributing to the expansion of world trade and closer economic relations, Building Bridges Across the Atlantic.

[6] http://www.google.at/search?q=cache:EsBr5gemUoC:international.tamu.edu/ipo/eucenter/Documents/BOYER%2520PAPER.doc+USEuropean+Union+relations+in+the+Aftermath+of+9-11&hl=de&ie=UTF-8

[7] http://www.worldpolicy.org/journal/articles/wpj01-4/Walker.pdf

[8] William Wallece, Jan Yielonka, 'Misunderstanding Europe', *Foreign Affaires,* November/December 1998

[9] www.ciaonet.org/wps/heb03/heb03.pdf

[10] http://www.bigissueground.com/politics/ash-eufuture.shtml

[11] EU is presently striking for speedier and tighter integration across the board.

[12] It is not the purpose of this paper to analyze the EPF is defined.

[13] www.ciaonet.org/wps/wao01/ - 101k.

[14] http://www.rand.org/publications/MR/MR1590/pdf.

[15] A terrorist act is described as an attack against the life, physical integrity or liberty of internationally protected persons (including diplomatic agents), offences involving kidnapping, taking of a hostage, serious unlawful detention, use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb.... act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person (paragraph 1); and against property if the act created a collective danger for persons (paragraph 2).

[16] "Terrorism is one of the serious forms of crime to be prevented and combated by developing common action in three different ways: closer cooperation between police forces, customs authorities and other competent authorities, including Europol; closer cooperation between judicial and other competent authorities of the Member States; approximation, where necessary, of rules on criminal matters".

[17] 'EU action plan in response to 9.11 2001: one year after ' MEMO/02/187, European Commission, External Relations. Brussels, 9th Sepetember, 2002.

[18] Putin was the first president to call the White House in an attempt to express his compassion and support for the victims of 9.11.

[19] National ministers agreeing on matters in their responsibility and heads of government deciding the most difficult questions of the EU.

The Perception of the Other and the Reabilitation of the Trust in the Balkans

D. Iacob
C. Hlihor

The Balkans[1] continues to be a turbulent world. The conflict and wars that shook the Balkans in the last years with hardly any interruption were always allied with terrible atrocities. The hatred that spread among the Balkan people, the political, ethnic and religious intolerance combined with wild wickedness became a "coat of arms" for many countries of the South-East Europe.

International community, concerned by the Balkans' evolutions interfered in order to bring the peace, security and stability in the area. Political, economical and military solutions solved only a part of the serious problems of the area[2]. The failure of the West to democratize The Balkans and the obvious conflict mismanagement in the region call for an explanation which we can find in the psychological and geopolitical analysis. So, the determination at the essence level of the historical roots and the understanding of "human earthquake" of human perception changes at the ethnical and religious community level from this turbulent region of Europe. It represents the main target of our research. For these reasons, we will draw a methodological hypothesis which will analyze the role of "the other perception" in the rehabilitation of trust post-conflict between different ethnical and religious groups in region, and in the end we will make some possible suggestions regarding the way of the action.

1. *The Weak Historical Balance, Perceptions and Stereotypes in the Balkans*

In an age in which mass media is dominant, it is difficult to conceive that any elements which generate crises and conflicts can not be known in time. But we believe that Walter S. Jones was right when he said that "Facts do not speak for themselves, but are given meaning by each interpreter from his own... point of view. The conclusion that follows from facts depends on the interpretation that is given to the facts"[3]. Therefore we think that an assumption borrowed from the general theory of systems and combined with the other perception theory can offer another understanding perspective not only to what is happening today in the ex-Yugoslavian area but why it is happening.

Overall, through arguments that came from the general theory of systems and from the organization management, they accept the idea that systems, organizations aim to balance to an optimal state of function[4]. When the turbulences in the global environment determine changes and reorganization in the international relations' structure, the systems tend to lose the balance in the process of redefine themselves.

In those situations, the strategy is essential to be used in gaining a new balance. The Balkans was seen as a different entity in the history of Europe from the spiritual-cultural point of view and also from the political point of view, although the differences seemed to be the rule in this mosaic of people and national minorities. The balance from Balkans was weak all the time because of the action of some aggregation/des-aggregation forces

which acted from interior and also from the exterior. Aggregation-as a process of balance-can be obtained in different ways. In the history of some regions can exist "forced aggregations" through which mechanical, unnatural balances are made. This state exists as long as the external factor has the capacity to maintain/to impose the aggregation force. In this way we can explain the partial balance in the Balkans, in the Ottoman, and then Habsburg Empire period[5] and recently the "Yugoslavian factor". Of course, there are wanted "natural aggregation" in which the economical-political systems obtain long time balance, but unfortunately it didn't happened in the Balkans. According to W. Hagen "Balkan ethnic strains are neither as ancient as time nor as recent as the rise to power of Slobodan Milosevic: rather, they are about as old as the dissolution of the Ottoman Empire and rise of nationalism"[6]. As the Ottoman Empire began to break down in the 18th century, the ideology of European nationalism penetrated the Balkans in support of the Balkan Christians' claim to liberation from increasingly oppressive Turkish rule. Eager for territorial gains or Balkan Christian clients, some European Great Powers, notably Russia, became patrons of this process. Thus the foundations of independent national states were laid in Serbia in 1815, in Greece in 1830, in Bulgaria in 1878, and Albania in 1913. In each case, the liberated states territory contained various minorities besides the new ruling nationality. The new states were all also fragments of the ideal territorial nations in the minds of the new nationalists elites. These ideal nations-Greater Serbia, Greater Albania, Greater Greece- were surrounded by other regions populated by still more national minorities and they could belong to one or more neighboring states. In other words, the Balkan states were all born in nineteenth and early twentieth centuries as irredentist nations. The territorial problem of the Balkan states and of the minorities "left outside the borders" was those that generated hate, crises and conflicts. When the South/East European map was modified, the ethnical borders were never overlap to the political borders. Slowly, the nation did not concord to the national state in the Balkans. A nation. according to Jenny Engstrom, "can be defined as a named human population sharing a historical territory, common economy and common legal rights and duties for all members"[7].

National identity is shaped by perception of Self and the Other. In the historical evolution chance built their self image. The image of a nation is a precious good for a community. Perceptions, in turn, are crucial for the influence of the information based on which people make beliefs and create "trusts". They influence "both the way in which things are seen as well as the facts, and what significance these «facts» carry...and perceptions according to where the observer is located in relation to the thing viewed"[8]. From this point of view, it is extremely important the way in which people perceive their own historical evolution but also, in which way the evolution of the other is reflected.

In the last decades, in the explaining of the social field the theories of the Palo Alto School were frequently used, regarding the optimal aggregation force of the social communication. Also the social representation of the French School was used. We live as individuals in a social representations universe. These are making an "evaluation device, a reality lecture pattern, a placement in a world of values and an own interpretation gave to this world"[9]. Serge Moscovici says that the social representations "make the world to be what we believe that is or that it should be"[10]. So these are also the ways to think practical, oriented to communication and the possession of social, both physique and ideal. Social representations are made inside of a process of elaborating a perception but also a mental perception of reality in which the social objects (persons, context, facts, situations) are transforming themselves in symbolic categories (values, believes, mentalities, psycho fixations, ideologies) with which we operate to understand the world in which we live/move[11].

S. Moscovici says that the social representations contribute to the forming process of behavior and the orientation of social communication. It is very important to

understand the mechanisms through which it is elaborated and, especially, through which these representations are modified, in order to come close to the knowing of the causes which generate the conflict behavior between ethnic or other nature' people/groups. Referring to these, as Moscovici believes that perceptions can contribute to the understanding of social groups' behavior, especially in the crises and revolt times, when "the images" suffers a change. People are more open to talk, the images are more alive, the collective memory is evoked and the behavior becomes more spontaneous. The individuals are motivated by their will to understand a growing unfamiliar and troubled world[12]. This understanding of a changing world is influenced by an already made "lecture pattern". Since the beginning of the 20th century, Walter Lippman wrote that "man... is learning to see with his mind vast proportion of the world that he could never seen, touch, smell, hear or remember. Gradually he makes for himself a trustworthy picture inside his head of the world beyond his reach" [13]. In other words, from the wealth of the events and information available, we select those that confirm an already existing image (selective perception). Furthermore, information that is not interesting can be ignored. So, we think that Jean-Claude Abric was right when he said that from these points of view we can not operate with objective political, social, cultural reality but with any reality it represented (meaning get hold by individual or group) rebuilt in system cognitive, or integrated in his system of values depending on his history and the general social and ideological context[14]. It is obvious that the perceptions of the Albanians in Kosovo were never similar to those of the Serbs in Mitrovita regarding the last events in Kosovo. The Albanians and the Serbs may have lived side by side for centuries in Kosovo, but the Albanians are regarded as squatters. The Serbs consider that the Albanians are backward, alien and that there are too many of them and that they are in the wrong place. Kosovo is perceived by Serbs as "holy place" for their history. For the most Albanians from Kosovo, perceptions on Kosovo are wrong.

From this perspective we have a possible explanation for the behavior and the attitude of some people/groups that took part in the last years' events in the former Yugoslavian area which otherwise look incomprehensible. Eloise de Leon presented at W. Wilson Center, on March 2000, a relevant happening, lived by an Albanian actor: "we were in Macedonia at a festival of Art Schools and it was Albania, Macedonia, Bulgaria, Serbia, Croatia and some other schools of ex-Yugoslavia. Well, I saw a girl and I liked her very much but I never talked with her, maybe because I was Albanian and she was Serbian. We hadn't made any sign to each other. I never made any sign to her. The situation was, indeed, horrible. I couldn't talk to that girl just because of my being an Albanian and her being a Serb" [15].

So strong were the prejudices and the outlooks connected to the other image, of the Serbian in this case, that the Albanian couldn't act in a natural and logical way in a situation as normal as it can be. This situation brings in discussion questions that we all have asked ourselves at least once. Were the Serbs as wild as we thought them to be? Did the Romanians always try to lie on the Others? Were Bulgarians really always hating the Greeks, disliked the Turks, and were fond of the Serbs and mocking the Romanians? Did the Greeks abhor the Turks, demonstrate superiority over the Bulgarians, made compromises with the Serbs and neglect the Albanians? Were all Albanians all the time fighting with the Serbs and admiring the Turks? For sure this perception of the "other" doesn't characterize an ethnic/minority as a whole but then why is it accepted? When an opinion test indicates that 91% from the Albanian population in Macedonia have dislikes of the Jewish people or that 73% from the Albanians from Albania have dislikes over the gipsy people[16], things don't look so simple and they become more and more complicated in crises situations.

A plausible explanation we find in W. Lippman who shows that "the immense majority of people don't judge the things (the persons) after facts but after their representation made by images from anticipated schemes[17]. These images formerly formatted mix up with

stereotypes, which are defined in many ways. Lippman defines them like the image of our case" [18]. In fact the stereotypes are a sign whose primary function is to establish borders between others. By using them it is possible to translate the name of the other into a metaphor convenient for placements on the mental maps, forming thus specific zones, which will be subject of further elaboration. So, the stereotypes are constituted in a very important mechanism, which maintains the prejudices and from here comes the resistance in time at the changing etiquette given by the prejudices, a fact that affects in a visible way the groups' relations.

The Balkans is maybe the most productive area of the continent in the stereotypes matter. Maria Todorova traces the genealogy of Balkanism through the travel writings of western authors to explore how the term Balkan has been negatively constructed over the past three centuries[19]. In XIX century when the journey descriptions from the Balkans countries have grown, the region was presented like an area in which there was a primitive, noisy and aggressive trade but full of color and diverse, which was opposed, without any doubt, to the rigorous and the standardized West[20]. We observe that after a century the western images of the Balkans haven't changed very much. The British journalist Michael Nicholson wrote: "The ferocity of the Balkan people has at times been so primitive that anthropologists have compared them to the Amazon's Ignamano, one of the world's most savage and primitive tribes" [21]. Robert O. Kaplan, referring to Balkan people, shows that they are deeply immersed in their bloody history. "This was a time-capsule world; a sort of a stage upon which people raged, spilled blood, experienced visions and ecstasies. Yet their expressions remained fixed and distant, like dusty statuary"[22]. We notice that nowadays the Balkanization signifies the same disintegration of viable nation-state and reversion to the tribal, the backwards, the primitive, the barbarian[23].

On the other hand, the Balkan people have their own stereotypes. The Croats, for example, use many of these same Balkan stereotypes to different rate and to distance themselves from their Yugoslav brethren. They characterize themselves as more progressive, prosperous, hard-working, tolerant democratic or, in a word, European, in contrast to their primitive, lazy, intolerant, Balkan neighbors. Michael Ignatieff related about a conversation with a Serb soldier which had taken place in Eastern Croatia in a village called Mirkovic. Ignatieff asked him what made him believe he was different from a Croat. The soldier listed many irreconcilable differences between the Serbs and the Croats and accused the foreigners of not understanding them and that is why they considered the Serbs and the Croats to be alike, when they were so different[24].

The stereotypes and the enemy image are formed in response to basic human psychological need for reality. Janet Gross Stein wrote that "Membership in a group leads to systematic comparison, differentiation and derogation of other groups"[25]. When the identities are compatible, the conflict is minimized. If the identities are incompatible the conflict is possible. A violent conflict becomes more likely when one identity is based on the refusal to recognize another identity, when recognizing the other's identity is felt to undetermine one's own identity. Albanians and the Serbs from Kosovo are often considered as mutually exclusive in this way. Common cognitive bases and stereotypes tend to intensify enemy images. Egocentric bias leads people to overestimate the degree to which others' actors are directed at them. Hence they may perceive themselves to be a target of Other's actions even when the other is not actually directing action toward them. People also tend attribute Other's actions to their character, rather than their situation. Hence, they tend to see Other as bad, rather than as constrained by difficult circumstances. A lot of facts, which happened in the last years in the former Yugoslavia show that this assumption is correct.

2. *Changing the Image of Other Lethal Stereotypes and Rebuilding the Trust*

Many authors believe that enemy's images and lethal stereotypes tend to be self-fulfilling and self-reinforcing[26]. People tend to be more aggressively based on their enemy image or stereotype. This aggressive behavior is likely to provoke a hostile response, which is then simply taken as confirmation of the initial stereotype. Enemy images and stereotypes tend to occupy a central position in groups' belief systems. Groups are highly resistant to changing their central beliefs; changes tend to begin with more marginal beliefs. Finally, people tend to seek out information which confirms existing stereotypes and discount information which would challenge their stereotypes. They also tend to interpret information about the Other negatively, in ways which support their existing stereotypes. The Albanians from Kosovo are seen like backwards, aliens and that they are in the wrong place, so it isn't extraordinary that their mass expulsion from their native places was seen like a normal thing.

Despite these difficulties we think that it is possible to change enemy images. Stereotypes may change when their bonders are presented with a large amount of disconfirming information in a relatively short period. Stereotypes also change gradually over time. As discrepant information arises, people write "exceptions" into the stereotype. This thing could happen if we change in an essential way the messages, we replace the symbols or other "hard" elements from the identity matrix of each group. For this they must action on those factors that lead to the appearance and preservation of the stereotypes that concern the other.

One of the most important factors that helps to form the identity matrix of the group and so its own image of the other is the educational one. In the form without any institutions/the family and the social environment closed to the child/the future grownup and also in that form with institutions- the school in its integrity but also in other institution of preparation- upbringing that offers the person a first lecture of reality. The process starts with one's experience in early life, in school, with children's books, fairytales and other leisure literature, the theatre and so on.

It is very hard to change the elements that hold on to tradition and historical peculiarity in the matter of upbringing in family. Many folk songs, fairytales and stories that are the educational background of the child in the Balkans family contents direct/indirect references – with negative connotations addressed to the "Turk", the "Greek", the "Albanian", the "Serb". We believe that only the collective lost of memory can action on the future generations. The correction of the image of the other person/the neighbor and the elimination of the stereotypes in school is possible and necessary. It is possible on one condition: the political factor must not handle the mass, for its maintenance at power, through cultivation of the stereotypes and of the image of the other person like an enemy of the community.

In October 1998, the proceeding of the International Conference on "The image of the Other/The neighbor in the School Textbooks of the Balkan Countries" concluded that there is a need for substantial intervention in the school textbooks of the Balkan countries in order to eliminate the national prejudice and thus encourage the peaceful co-existence of the various peoples[27]. There are consistent national stereotype all over the Balkans, which share certain constants and essentially all that has been changed is the name of the Other to which they applied. In most cases, each nation-state presents its own members as a «chosen people», heroes or victims in relation to the Other[28].

We thing that a change in the image of the other is possible by revising the content of the schoolbooks, especially the history and literature ones. At the same time we must take into consideration also the socio/humanist disciplines' area from universities (the culture sociology, the ethnology, anthropology, and so on). It could be very profitable for the young people from the Balkan countries to find in schoolbooks more information about the history and common values of this area. We are certain that when a Romanian student will know more

about the work of the Serb author Ivo Andric or about the work of the Albanian author Ismail Kadare and also about the cultural and historical traditions of the Balkan people, he, the Romanian student will be more sensitive at the commune values of the area, he will cooperate more and he will withdraw the stereotypes and the negative images about the Other.

In the experience area of symbolical reconstruction of the Balkans there are some succefull experiences. For example, we could think more about the way in which Goran Bregovic succeded to gather in an artistical group, members and folk musical themes from all over the Balkans. He shows, in this way, that the people from the Balkans have the same values which have an international impact, values that play the role of a bridge in the Balkans area and thus, in the relation of the Balkans with the whole world.

Another important fact in eliminating the stereotypes and changing the image of the other person is mass-media. Michael Kunczik wrote that "radio and TV transmissions of international programs, newspapers and magazines, cultural exchanges programs sports and so on, are probably the strongest images shapers[29]. The journalist does not deal with reality, but with media reality constructed by him. The reality shown by the mass-media is not factual reality and very often does not correspond to «what really happened». Mass-media construct a separate reality. The criteria used to construct this reality are the so called «news values»[30], but the recipient, who has no primary access to most things reported on this constructed world becomes «factual reality». Most recipients/readers consider news as authentic testimony of «actual happening»."

The conflicts from the former Yugoslavia, especially the ones from Bosnia and Kosovo, have revealed that in crises situations mass-media isn't anymore neutral in the matter of the information about the belligerent. This thing was recognized by Jamie Shea, public relations officer at NATO, during the "Alliance Force" operation in 1999: for the leaders, winning a press campaign is as important as winning a military campaign- the two of them are inseparable and you can't win one without the other[31]. For winning the press campaign the journalists give a very important place to stereotypes and the image of the enemy, when everything is about what lies on the other side of the barricade. General Wesley K. Clark talking about the "imagologycal ammunition" used by the Serbian media controlled by Slobodan Milosevici noted: "High Representative Westendoerp repeatedly complained about the Serb media, which had been especially acid recently using images comparing NATO troops to the Nazi and other incendiary efforts directed at undercutting implementation of the Dayton Agreement and inciting violence against our troops" [32].

A sociological research about the impact of imagologycal ammunition used in the areas of conflict in former Yugoslavia, about keeping the stereotypes and the negative image of the other is necessary. The same mass-media must address to the same information consumer and, after ending the hostilities, where is its credibility? Where can be its place in the post conflict rehabilitation of the trust between communities which at a moment had been at war? Davis Amis, referring to this aspect showed that "From the start foreign reporters were better treated in Zagreb and Ljubljana whose secessionist leaders understood the prime importance of media image in gaining international support than Belgrad" [33]. Implicit, he says, there was a partnership in reflecting the reality in Balkans but it wasn't a unilateral one. Kunezic's researches show that "In Kosovo when negative information is offered both supporters and opponents of certain position behave almost the same. They lead it. In other words the protective shield of selective perception works against information that might result in a positive change of opinion but not against information that might produce a negative change of opinion" [34]. We think that such a tendency is still dominant in all countries of Former Yugoslavia. In most cases nationalist propaganda dominates the competition between journalistic ethics and national interest[35]. Producing and reproducing prejudices, stereotypes and myths is the rule of the game. Journalists should not be looked at

independently, but as a part of the relations and dependencies in which they are involved in a particular society. From that point of view just like any other citizen "they can have the same stereotype and enemy image". We think that it is necessary to unfold some actions and activities in front of the journalists in order to change their mentalities and stereotypes bounded to patriotism and nationalism. There are some journalists in the Balkans who manage to step outside the national hysteria and fight persistently in defense of alternative journalism which respects diversity understands communication between various communities engaged in an antinationalist dialogue and promotes tolerance of "Otherness". The nucleus which exists in every country that has appeared after the tearing apart of the former Yugoslavian state can be used for developing a new type of reporter, a reporter that first is a concerned citizen. This new type of a reporter must know to choose what kind of society he wants to live in, and he should decide how he is going to enjoy the right and duties he has. Let us emphasize again one important point of view which is very often not recognized but is vital for the peace within a nation or a province/region, namely an ethically responsible journalism. The journalists must know what are the consequences of their actions.

This truth is valid for Public Relations (PR) too. Michel Kunczik believes that PR aims to correcting the "false" image previously created by the mass-media. Unfortunately, in the Balkans, there were some cases in which PR "tried to create a positive image that, in most cases, didn't reflect the reality including lying and disinformation"[36]. The representative of American PR science Scott M. Cutlip, in 1994 in his book "The Unseen power: Public Relations A History" pointed out that in 1993, "tiny Kosovo threatened by Serbian aggression after Yugoslavia's break up had asked the American PR firm RUDER-FINN to wage an intense public relations campaign in the US" to build up an enemy image of Serbia[37]. James Harff, the president of Ruder Finn's global network explained: The people from Kosovo knew their rights. We helped them to formulate the message in a way that Americans could understand[38].

Calin Hentea affirms that in practice, in limit situations, the officials found at power don't waver to use the dates and the facts from the field just in a favorable way of their interests even if for this they must omit important parts of the reality[39]. But this practice has consequences after the end of conflicts/wars; because it perpetuates and stresses the prejudices, stereotypes which cannot be erased from the mind of the image consumer. This fact was observed for a very long time. At the beginning of the Second World War, Ilya Etirenburg, the well-known Russian writer and journalist, noted in his memoires "the hate I conquered very hard" [40]. In this context Etirenburg noticed the importance of giving to the warrior a reason to hate. It is known that decades after the conflagration ended the image of the other like an enemy blurs and disappears. But for this there are necessary, usually, two generations which should live a history kept away from acute, special and violent conflicts. We can't ignore the fact that during the Cold War, in spite of the ideological antagonisms which seemed unstoppable, the image of the other, of the enemy faded away. It was a time for economic, social, and cultural cooperation, and, step by step, day after day "the Other" became less an enemy, and more a partner. Taking in consideration the facts presented here, some essential questions can be raised. We can ask ourselves if, during a conflict, the comparison of the enemy with a demon is inevitable. Also, we can ask ourselves till where the mass-media and the PR structures can engage to promote the message about the image "demon=enemy". Probably the nature of the conflicts and the engagement in conflicts of the vectors of public communication they should be thought over. What has happened in Kosovo and what is happening in Irak made us think that such questins must be answered.

NOTES:

[1] Recently, more specialists do not agree the overall of the Balkan term, in order to mark the crisis and conflicts in these part of Europe. The Balkans is a geopolitical metaphor. (Ljubica Jehisic, *Farewell to the Balkans: the Slovenian Media's coverage of the war in the Federal Republic of Yugoslavia (March-June 1999)* in: *International Security, mass-media and public opinion*, Marjan Malesic, (ed.), Ljubliana, 2000, p. 88)

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Geopolitical Patterns of Euro-Atlanticism
A Perspective from South Eastern Europe*

Ionel Nicu Sava

Summary

- With the US-European differences on current international issues (NATO's new role, the war in Iraq, the strategy on terrorism), it is necessary to reinterpret the transatlantic relationship. Most analysts agree the Euro-Atlantic canon as established after 1945 is no longer valid. Geopolitics is a useful tool in interpreting current events as it allows students to analyze events and processes on large spaces and over *longues durées*.
- From a geopolitical point of view, the world has a dual structure. States and empires are thalassocratic (sea power) or tellurocratic (land power). In spite of a rationalization process, quite obvious in the modern age, geopolitics has kept its archaic core structure, still having somehow a "sacred character". Perceptions, visions, projects are still inspired by some non-rational mindsets. Geopolitically, civilizations, as expressions of "sacred concepts", are *thalassocratic* or *tellurocratic*. Therefore, the hypothesis of the sea-power and the land-power that this paper is based on is quite significant, because it reveals the relationship between the Anglo-American sea-powers and the European land-powers from a new angle.
- The European continent has a dual geopolitical character, being at the same time Euro-Atlantic and Eurasiatic. Geopolitically, Europe might be Euro-Atlantic or Eurasiatic. Moreover, there might be no autonomous European geopolitical entity yet. Currently, Europe plays the role of a Euro-Atlantic platform, ie of geopolitical support to the Anglo-American seapower.
- This role presupposes the American strategic presence in Europe with the prevention of EU (German) transformation into a continental power, with the containment of Russia and the appeasement of France. The American hegemony has the role of keeping Europe in a preunification stage which, in turn, leads to a geopolitical neutralization of Western Europe.
- With NATO enlargement to the East, the Euro-Atlantic dimension in Europe has actually strengthened. Poland and Romania have become allies and promoters of the Atlantic perspective and therefore players of the American European strategy. These two countries are the pivotal countries for the American strategy of the Global Heartland. Poland's and Romania's NATO membership has moved the Euro-Atlantic security frontier on the Baltic-Black Sea isthmus.
- With the American initiative to stabilize the Caucasus, Central Asia and the Gulf, the circle of global Euro-Atlantic strategy closes. Practically, with the end of the Cold War, with NATO expansion and interventions in Afghanistan and Iraq, we are witnessing a process of globalization of the Euro-Atlantic civilization, based on sea-power, with all its associated expressions in the economy (free market), politics (democracy), ideology (freedom) and technology (the Internet).
- South Eastern Europe is about to play a significant role in the stabilizing strategy of Euro-Atlanticism for the Caucasus and Central Asia due to its geographic location next to the new Heartland. Romania and Bulgaria are the regional players which can give Euro-Atlanticism a new dimension on the Black Sea.

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Introduction

In April 2004, NATO's frontier moved to the Baltic-Black Sea isthmus, including Bulgaria, Romania, Slovenia and the Baltic countries in the North Atlantic Alliance and giving Euro-Atlanticism a new geopolitical landscape. A decade ago, no one would have thought a Latvian airman would fly at the outskirts of St Petersburg or that a Bulgarian fisherman would hoist a NATO flag while sailing on the Black Sea. Constanta in Romania has become an important NATO sea and air base next to the Caucasus, Central Asia and the Middle East. In May 2004 the European Union also enlarged eastwards to include 10 new members into the club of the most prosperous countries in the world. It is the biggest step the Europeans ever made. Prague, Warsaw and Budapest are now again part of the Western world. In 2007, more new members (Bulgaria, Romania) are to join. By 2010, EU and NATO most probably will overlap in Central and South Eastern Europe, creating an arc of security and stability from the Baltic to the Black Sea.

The goal of this paper is to link these two events of historical significance into a coherent geopolitical explanation on a *longue durée* and to give a reasonable policy prediction for the fate of Euro-Atlanticism and for the Central and South Eastern European countries as part of the Euro-Atlantic world. With the war in Iraq, no one would deny that Euro-Atlanticism faces a crisis. The differences in international politics between the Europeans and the Americans have increased. The gap between Washington and Brussels became more evident when the crisis in Iraq deepened one year after the fall of Saddam Hussein.

The question is whether the relationships over the Atlantic will be conflictual or complementary. Will America be able to keep its leadership in world affairs? Will, on a long run, a united Europe able to replace America in world affairs? From a geopolitical point of view, the question is if the Euro-Atlantic system might be refounded or whether on its ruins a Euro-Asiatic one will be raised. Geopolitically, this question is about the competition between the sea-power and the land-power.

Enlargement and the relationships of both USA and EU with third parties (Russia, the Muslim world, Iraq, Middle East) have certainly changed the substance of the Trans-Atlantic relationship. In consequence, a redefinition of the conceptual apparatus of understanding Euro-Atlanticism is necessary. The Euro-Atlantic canon as established after 1945 is no longer valid. Why, then, should the Central and South Eastern European countries care about it?

Therefore, this paper examines whether there is merely a readjustment of the American-European relationships or a dramatic change. On the one hand, it seems the American presence in Europe and the perpetuation of Europe's role as a Euro-Atlantic platform will not diminish in the near future. It is based on the hypothesis that the end of the Cold War, NATO enlargement and the interventions in Afghanistan and Iraq have increased the function of the sea-power which is America. On the other hand, EU enlargement to Central Europe and improved EURussia political cooperation have increased the land-power strategic capability which is Europe. In such conditions, can Euro-Atlanticism survive its own success in spite of so many uncertainties? In order to explain this one should go to the core of modern geopolitics.

Towards a Non-Rational Definition of Geopolitics

Many of us believe that in the last few decades geopolitics has been reconsidered. Others think it has been reinvented. Either way, the fact is that geopolitics is perceived as having more relevance and this is a good thing simply because it enlarges our capacity to interpret and predict events in a time of great uncertainty.

We have witnessed a process of continuous rationalization of human knowledge in the modern age. However, is there anything to escape reason? A short incursion into the archaeology of geopolitics is useful for understanding the horizon under which we can discuss the issue of Euro-Atlanticism, that is the opposition between the land-power and sea-power.

In the pre-modern representations, with alchemy and magic as the main "sciences" in society, geography enjoyed a particular status as *sacred geography*. It is probable that in primitive thinking the contiguous land had generated the notion of space while the idea of water and rivers had generated the notion of time. Desacralization of geography is an incomplete process, so humans still operate with less scientific notions of distances, space and time. We are mapping reality. Maps are usually subjective representations of the human mind, whether political actors, students or the public are aware of it or not. Hence, geopolitics is not yet a complete "science". It still operates with less rational concepts, visions and projects. Geopolitics still has a non-rational content. This silent and rudimentary knowledge lies at the bottom of the human mind.

The German geopolitician Karl Haushofer pointed out the significance of what he called *pan-ideas* to explain things that otherwise might not be rationally explained.[1] A pan-idea is a geographical representation of a political, religious, ethnic or regional project that emerges from places and populations. The ancient world is where most pan-ideas were elaborated. Hence, one could presume irrational elements of sacred geography might still be at the bottom of modern thinking and influence the style of thinking, political projects and even scientific works. Samuel P Huntington's idea of the clash of civilizations with religious conflict in the depths of it is a case in point. From a geopolitical point of view it is a pan-idea of the Western Christian world. No rational explanation could tell us why religions should clash. There has been competition and conflict among religions for more than 2,000 years. Why should they clash now in particular? It is most probably an example of "primitive" thinking expressed in a modern theory that Huntington just brought to the surface.

Therefore, if we accept geopolitics is not a science in the current understanding of the term but rather a reflexive thinking relative to power, geography and politics, then we can define it as an actual expression of a deeper process that usually combines primordial images and current representations of world politics. It is, I should confess, a non-orthodox way of approaching geopolitics. However, not being rational does not mean being completely irrational.

Geopolitics of Land-Power & of Sea-Power: *tellurocratia* & *thalassocratia*

The anthropology of sacred representations helps us to define the constitutive elements of it. The prevailing elements are the *land* and the *sea*. They represent everything relevant to human life: body and blood, soil and water, solid and liquid. In sacred cosmology, the *Land* represents stretching, immobility, territoriality, stiffness, stability and, of course, space. The *Water* represents mobility, nonterritoriality, movement, softness and, of course, time.

The Russian geopolitician Alexander Dugin considers land and sea represent universality, the link with the cosmos (the source of water is in the sky, the land is lifeless without the water, land and sea are the Cosmos on Earth).[2] These two primordial elements have generated two ways of thinking and hence two concepts of geopolitics: in Greek, *thalassocratia* and *tellurocratia*, the sea-thinking and the land-thinking. States and empires are thalassocratic or tellurocratic powers.

With this categorization, one could assume Carthage was the first major sea power in history while Rome was the first tellurocratic one. The Mediterranean Sea is to be considered the cradle of sea-thinking. The nostalgia for Atlantis expresses the nostalgia for a sunken land which all sea-oriented populations share. The ancient Greek diasporas in the Mediterranean supposedly passed thalassocratic thinking to the mediaeval city-states of Venice and Genoa which later handed it on to the people of the North, particularly to the Anglo-Saxons. Such a hypothesis presumes that the sea-thinking of the Anglo-Saxons was transferred through the ancient Mediterranean civilizations and not through the Vikings of the north. Is Euro-Atlanticism a prolongation of

Mediterraneanism and not of the Viking tradition? Most probably it is.

As compared to Carthage, Rome was a tellurocratic power. Three Roman frontiers had established the limits of European territorial expansion: the Gallic frontier to the west, to include Spain, France and Britain; the African frontier to the south to include territories of North Africa; and the Dacia frontier to the east, to include today's Romania. An alternative geopolitical explanation of why the Romans conquered Dacia (offered by the ancient Greek geographer Strabo) is that Roman strategists thought the distance between the Baltic and the Black seas was so short that it might be defended by two Roman legions. By militarily defending this isthmus the whole of Europe could be protected from Asian invaders. As a consequence, the Romans were the first to delineate the strategic fault line between Europe and Asia some two millennia ago.

Over time, all tellurocratic empires in Europe called themselves "Roman" too. In the West, the Holy Roman Empire. In the East, the Russian Orthodox Empire, with the Tsar in Moscow and, later on, in St Petersburg. The German Kaiser represented the land-power in the West while the Russian Tsar represented the same power in the East. "Kaiser" in German and "Tsar" in Slavic both mean "Caesar". To a certain extent, Hitler and Stalin illustrated the same geopolitical power base.

In the gallery of images and representations of sacred geography, the maritime vision presupposes the representation of seashore and islands as the "motherland", as the place of origin. The condition for keeping the seashore safe is to master the sea. The seaman always returns home. In the continental vision, what is important is the idea of "holy land", "sacred territory" (or *Mittelpunkt* in Friedrich Ratzel's anthropogeography),[3] but not necessarily the idea of returning home as well.

For the thalassocratic power, mastering the seas between the land mass is the source of power (the *Sea Power* in Alfred Mahan's theory).[4] For the tellurocratic power, mastering a land mass as large as possible is the real source of power (as in Friedrich Ratzel's *Lebensraum*). In its purest form, the Empire of the steppe is the ideal of the land power; Venice of the sea power. 'Contiguous' on the sea means mastering the seashore (this is Spykman's *Rimland*).[5] 'Contiguous' on the land means reaching the critical land mass that is the source of power (the *Heartland* in Mackinder's view,[6] *Lebensraum* in Ratzel's view).

Distances, time, surfaces, continents and seas have dimensions which people attach to them. From this point of view, one could assume the Greek mind is Mediterranean, the American mind is Euro-Atlantic (sea-minded), the Russian mind is Euro-Asiatic (continental) and the German one is purely European (land-minded). The North Americans have an island character in their mind, in spite of the huge dimensions of their land, while the Japanese islands have generated a continental mind. The American "dream" is to extend the American frontier on the sea: the American frontier is where the US Navy is. The Japanese "dream" is to move the frontier into Korea and Mainland China. Today's Japan is where Toyota and Mitsubishi are. The political forms and the military means are also associated with these mindsets. From this perspective, thalassocratia is committed to the "West", to trade, capitalism and material power. Tellurocratia is associated with the "East", to the Euro-Asiatic world and spiritual power.

As Rudolf Kjellen also noticed at the beginning of the 20th Century, in Western culture (mainly American) one of the most used expressions is "go ahead", denoting progressive culture, political action and geopolitical optimism.[7] On the contrary, with the Russians one of the well known expressions is "nichego" (nothing), incorporating pessimism, contemplation, fatalism, etc. It seems then that Atlantic geopolitics is optimistic, oriented toward progress, it is open and based on frontier enlargement. Asian geopolitics is pessimistic, fatalistic, based on the closure of the frontier. Quite interesting are the historical empires that might result from here: the Western empire is based on material domination and capitalism, while the Eastern Empire is based on spiritual (ideological) domination and militarism. It implies, for

instance, that the Russians are reactive because of "fear" while the Americans are proactive because of "mission". Since we keep to the purely theoretical realm, it is not so difficult to presume the Americans expand to the places where they think they have an invitation to "go ahead" for progress, while the Russians expand to the places they fear most and where "nichego" would happen without Russian "salvation".

The hypothesis that there are geopolitical mindsets, derived from the pre-modern sacred geography, that suggest an opposition between two ways of thinking (seathinking and land-thinking), is quite challenging. One should examine this matter further.

Europe, the Continental Power; America, the Sea-Power. The Sources of Euro-Atlanticism

If we take into account the differentiation between the concepts of sea-power and land-power as operating at the level of geopolitical representations, then we should consider the British scholar Sir Halford Mackinder as the founder of modern geopolitics in spite of the fact that, as it seems, he never used the term. It was the Swede Rudolf Kjellen who coined the term in 1899. However, it was Mackinder who foresaw and built the geopolitical system in the light of the opposition between land-power and sea-power. This opposition is, in the understanding of this paper, the main driving force behind mainstream geopolitics.

In order to illustrate the case, I think we should take two European examples. The modern state system was created in Europe with the 1648 peace of Westphalia. It seems that behind this moment of enormous importance for world politics was the action of a basic geopolitical principle that intended to delay the establishment of a major land power in Europe. Henry Kissinger points out[8] that the peace at Westphalia had no role other than to prevent the political unification of German *länder* into a political landmass in Central Europe. For the security of France, the diplomacy initiated by Cardinal Richelieu tried to prevent the coming into being of a *Mitteleuropean* empire as early as 1648. It was a *raison d'État* until 1871 to keep a politically fragmented territory between France and Russia. The unification, indeed the reunification of Germany was greeted without enthusiasm outside Berlin.

To a certain extent, most of France's European policy is related to the necessity for a "European" supremacy in Central Europe, or at least equality with Germany. After the Nazi experience, the formation of NATO in 1949 and of the European Coal and Steel Community in 1957 have had in the background the integration of Central Europe (ie Germany) into a political, strategic and economic network to prevent the raising of an isolated land power at Europe's core. A European Germany is safe for France and, therefore, for Europe.

Today, this political vision in the European Union is uncontested. Its principles come from the incipient modern world almost four centuries ago, but at their bottom lies a geopolitical calculation. One could say Richelieu has made European policy for the last 350 years. After 1990, an enlarged Central Europe, to include the former GDR into Germany, and Poland, Czech Republic, Hungary, Slovenia into the European Union, most probably would follow the same logic. Without expanding the EU to Central and Eastern Europe, a unified Germany might become too strong in Europe. As I shall explain later, Poland is one of the counterbalancing pieces to Germany within the EU, and therefore an important partner to France.

A second example is Russia, which from a geopolitical point of view has the characteristics of a land-power. It is not only its huge territory but its mindset. The Romanian interwar historian Nicolae Iorga pointed out that Russia is a Eurasian empire, because it is an expression of Asian power with European clothing. The Varyags of the North (the Vikings) that established the first Russian state in Kiev in the 9th century were replaced by the "people of the steppe" coming from the East that moved the capital city to Moscow by the 16th century. Since then, Russia has played the role of a land-power

into conflict or cooperation with another (Central) European land-power.

In the 18th and 19th centuries, the Polish kingdom and the Romanian principalities were the buffer zone between these two geopolitical entities. For Romania, the Crimea War of 1853-1856 was a war between the sea-power (Britain and France) and the land-power (Russia). It had an enormous significance for Romania. Due to an increasing need for wheat in the metropolis, Britain had to secure trade at the Danube mouths. The strategic presence of Britain on the Black Sea and the political support of France led to the political unification of Romania in 1859. From our point of view, the presence of a Western sea-power in the Black Sea made possible the Romanian adventure to Europe. In a certain way, defeating Russia in Crimea meant the delay of occupation (and later on Sovietization) of Romania until 1945. However, in 1945 Mr Churchill decided the other way around and curbed a century of European history for Romania. For half a century, Romania turned to the "Egyptian slavery" imposed by Moscow. Just to mention it here, Romania's NATO membership in 2004 might be better understood within the framework of sea-power expansion to South Eastern Europe and to the Caucasus. One could presume that geopolitically Romania entered NATO in 2004 mainly because of the Black Sea.

From this short description of the functioning of two basic geopolitical principles results the conclusion that Eurasia becomes possible with the unification of Central and Eastern Europe in a single geopolitical entity. Hitler and, after 1945, Stalin both tried it. In Europe, the powers geopolitically interested in limiting the influence of either part are France and Great Britain. From a theoretical point of view, the condition for France to be an influential power in Europe is to develop relationships with both Russia and Germany to the extent that it prevents either of them becoming dominant. Between 1945-1991, Russia was an "enemy" to France to the extent it took over the role of Germany in Europe, while America was an "ally" to the extent it protected France's interests on the continent. De Gaulle's project of a "Common European House" might be as well understood as a reaction of France to both the American and Soviet domination of Europe. I think it is not exaggerated to say that de Gaulle envisaged a Europe having a German engine and a French driver, which is, from a geopolitical point of view, impossible. The "natural" partner of Germany is Russia, not France. The "natural" partner of France in a united Europe project is America (including Britain), because, at this moment, America seems to have the vision and the capacity to build in the long term a geopolitical entity able to subordinate both France's competitors (Germany and Russia) to continental supremacy.

Apart from Germany and Russia, that reveal the case of purely land powers, the dualistic geopolitical character of Europe is illustrated by the geopolitics of France. Some current studies point out that France is both sea-oriented (towards the Atlantic and Mediterranean) and land-oriented (towards Central and Eastern Europe). It might be a paradox of French geopolitics to be Euro-Atlantic and Eurasiatic at the same time. France is "condemned" to encourage as well as to discourage the involvement in European affairs of both America and Russia. A balance between Russian and American influence in Europe is most desirable to France simply because it gives a prominent role to Paris on the continent. If America and Britain are not present in Europe, then Germany might be tempted to cooperate with Russia, not with France. Germany is close to France when France is close to Britain and USA. Is the French diplomacy on Quai d'Orsay aware of this? When America's influence is about to increase, France will counterbalance this by encouraging independence in Berlin and by getting closer to Moscow, and vice versa. When France fights both Germany and Russia ... well, that is no longer France! Napoleon, Osvald Spengler said in the 1920s, was not French but an Anglo-Saxon "agent", because he fought both continental powers in Europe to the benefit of Britain. Marshal Petain, on the contrary, was an "agent" of Eurasian power, because he subordinated France to a

continental power (Germany). Moreover, any conflict between the continental powers serves the sea-power principle. France achieves a high profile in European politics when Germany and Russia are struggling against each other. At the start of the Cold War, for Chancellor Adenauer, France was the most precious ally in managing Russian (Soviet) occupation of Eastern Germany. No German recovery would have been possible without French support at the end of WWII.

Therefore, from a geopolitical point of view, the bases of the Euro-Atlantic power are on the European continent and they rely on the transformation of Europe into an Atlantic platform that is a base for the sea-power. By contrast, the sources of Eurasian power lie in transforming Europe into a land-base of Germany (EU) and/or Russia. The geopolitics of the 20th century was certainly Euro-Atlantic. It has involved the American strategic presence, the prevention of Germany becoming a continental power, the containment of Soviet Russia and the dualistic politics of France. Not by accident, the best known phrase related to NATO says the Alliance was created in order "to keep Germany down, Russia out and America in" Europe. One could add, "and France at the margin".

The War of the Continents & "Atlanticist" Geopolitics

If we accept that there are mindsets that are paradigmatically determined, then we have two opposing perspectives. Peoples, states, foreign policy and, last but not least, individual and collective psychologies reflect these perspectives. The Greeks represented the sea-mind by developing a coastal civilization on the Mediterranean seashore (including the Black Sea) based on trade (mercantilism) and market (currency). This is the prototype of the sea civilization (mercantilism-market/currency) where economics is above politics. Rome, on the contrary, was the prototype of land civilization based on militarism, administration and bureaucracy, where politics is above economics. Both of them lie at the bottom of modern Europe.

Immanuel Wallerstein explained[9] that, at the dawn of the great geographical discoveries in the 16th century, China was better suited for this endeavour. It already had improved navigation and administration techniques, the gunpowder and the fleet. Why the Chinese did not do it? Simply because they are not seaminded, explained Wallerstein. Chinese psychology is not geopolitically expansive but defensive. The Great Wall was in the Chinese mind first. The Europeans explored instead, despite being less technically prepared. They had the mind. By crossing the Atlantic, Columbus not only discovered America, but initiated the modern sea-power adventure: the Columbian era. One might wonder, why not call it the Atlantic era as well? The Mediterranean civilization expanded to Atlantic. This is what Columbus did.

Getting back to geopolitical thinking, Halford Mackinder's theory seems to catch quite accurately the character, on the one side, of the maritime perspective which means, in the modern age, Atlanticism, ie the primacy of the individual, economic liberalism, protestant democracy and urban life and, on the other side, of the continental perspective which means hierarchy, communitarism, authoritarianism and rural life. Mackinder's main work is called "Democratic Ideals and Reality".[10] Mackinder is, of course, pessimistic about the optimism inspired by the sea-power thinking. At the beginning of the 20th century, he warned the sea-power of the time (Britain) of the danger of a Eurasian union formed either by Germany or Russia or by both. He argued that the world was coming to the end of the "Columbian epoch". Sea-power was declining relative to land-power. His thesis, widely known as Mackinder's *Heartland Theory*, suggests that there was a pivotal area "in the closed heart-land of Euro-Asia" which was most likely to become the seat of world power. For Great Britain, the condition for keeping supremacy in world affairs was to prevent the formation of a Heartland that bridges Europe and Asia. The Rimland strategy launched after 1945 was a geopolitical countermeasure against the Soviet Heartland strategy. Protecting the

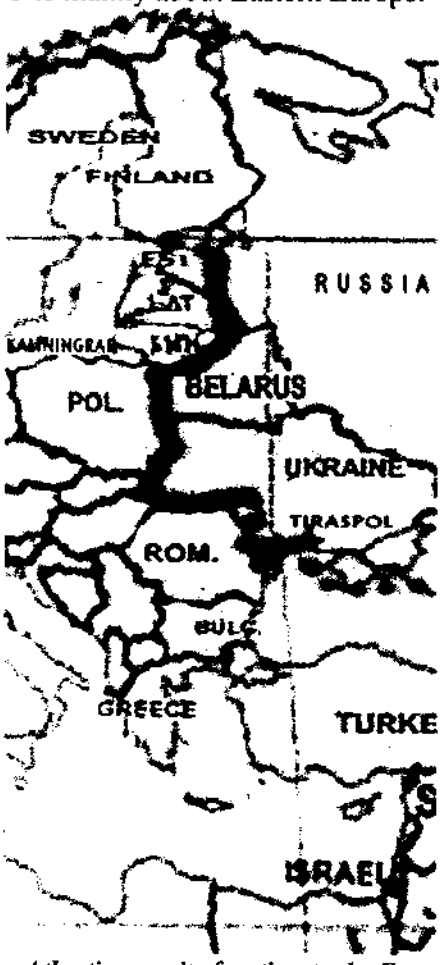
1945 was a geopolitical countermeasure against the Soviet Heartland strategy. Protecting the sea routes by mastering the sea shores is at the core of it. From this point of view, the "war of the continents" is not a war between mainlands but between the land power and the sea power. The Atlantic powers won both wars against land powers in 1945 and in 1991. Is the next stage of the "war of the continents" related to Afghanistan and Iraq?

One could conclude that the world has a dual geopolitical structure which has been generated not just by the physical and geographic environment in which have appeared and evolved different forms of social and political organization, but the mental structure of the populations that illustrated these organizing forms as well. In spite of a clear rationalization process which has become evident in the modern age, geopolitics has kept an archaic core. From a geopolitical point of view, civilizations, as expressions of sacred ideas, are still either maritime (ie thalassocratic) or continental (ie tellurocratic). Therefore, over a *longue durée*, the core question of Euro-Atlanticism is about the expanding powers of the sea power which is America. Euro-Atlanticism survives if the sea power civilization survives.

The American Offshore Strategy to Dominate Europe

In the context outlined above, the task of following the evolution lines of Euro-Atlantic geopolitics is much easier. The dual geopolitical character of Europe is now better delineated. Hence, it is hard to define Europe as an autonomous geopolitical entity. The "Atlantic Europe" is currently an American geopolitical platform while Euro-Asia is, potentially, a German (EU)-Russian conglomerate. This means there are two ways to define Europe's geopolitics: with its Atlantic or its Asian facade.

The Atlantic strategy has had in Europe its main bridge to world supremacy. To a certain extent, the reason the New World joined the two world wars was that any European power gaining supremacy of the Old World would challenge the American supremacy in the Western hemisphere. Before 1945, the possibility of Germany controlling Europe would most probably have deprived USA of its influence on the continent. After 1945, the Marshall Plan and NATO prevented Soviet domination. If NATO had not been created, the USA would have found something else to serve the American hegemonic interest in Europe. NATO thus transcends the breakdown of the Soviet Union and the reasons of its very existence pass over the issue of the Soviet communism. NATO is the tool America uses to be a European power. Between 1949-1991, NATO was linked with Western Europe. After 1991, NATO is mainly about Eastern Europe.



The Euro-Atlantic security frontier: to the East; the Baltic-Black Sea Isthmus

means the USA gets involved in Europe only when its strategic supremacy is challenged. Its policy is restricted to balancing any European initiative aimed at challenging American hegemony. From a US perspective, the Atlantic Europe should be a militarily denationalized entity, economically integrated but not politically united.

From this point of view, NATO expansion to Central and Eastern Europe means the preservation of US hegemony. It involves a minimal effort of America from "above" because, once the strategic umbrella is extended, under its protection "European affairs" might take their own course with the condition that they do not challenge US hegemony. This is the way one could explain the relative lack of US involvement in the Central and East European affairs *en détails*. On the one hand, American hegemony has the role to maintain Europe in a preunification stage due to the fact that, by the American presence, the Europeans lack the very reason for political unification. On the other hand, any initiative aimed at replacing the American hegemony is taken as a hostile act, no matter its source, West or East European. This was the case when European states questioned American hegemony on the Iraq issue. The crisis in Iraq gave Berlin and Moscow the opportunity to reaffirm their geopolitical ideal, that is of an autonomous and united Europe. After 1939 Germany and Russia for the first time had a common strategic goal against America.

In short, the American strategy has, in the long term, the effect of geopolitical annihilation of Western Europe. To challenge the US hegemony, Germany has two options: to nationalize its foreign policy or to reform the EU decision making process. A renationalization of Germany's foreign policy is impossible at this time; while a German leadership in European affairs is less probable because, with NATO extended, the Euro-Atlantic dimension has actually strengthened in Europe.

Poland and Romania are Atlantic allies and, one could presume, highly "Americanized". To "deamericanize" Poland and Romania a complete absorption of them into the European Union would be necessary. In the case of Poland, this requires a longer time than currently envisaged. Bulgaria is safe for the Alliance as long as it is a member of it.[12] Bulgaria's EU membership increases the eventuality of improved EU-Russia relationships. However, this process needs time.

By preserving and enlarging NATO and by the current process of EU redefinition, Western Europe is somehow geopolitically neutralized for a certain period of time. Neither could the individual EU countries adopt a straightforward foreign policy, because of the internal EU political procedures, nor could they raise the EU as a political entity, because of incomplete integration processes within the Union. Being geopolitically neutralized does not mean having no role in current international affairs, only that the important countries (Germany, France) have lost their traditional role and, as yet, the Union has not acquired a proper role.

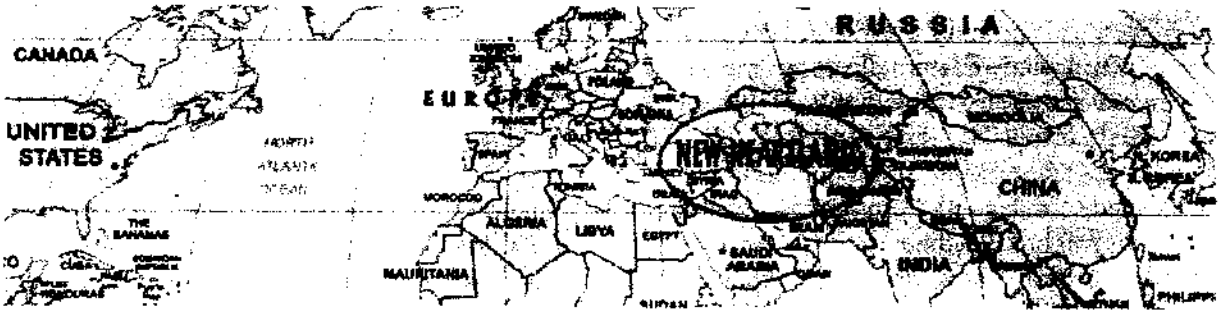
Global Balkans & the New Heartland

Global Balkans, a new wording of current geopolitics, was submitted by Zbiegniew Brezezinski as a form to define the space between Europe, the Persian Gulf and the Far East comprising the Caucasus, Central Asia, Afghanistan, Iraq, Iran, Syria.[13] Brezezinski defines the Global Balkans as "the most volatile and dangerous region of the world – with the explosive potential to plunge the world into chaos – [that] will be the crucial swathe of Eurasia between Europe and the Far East. (...) It is here that America could slide into a collision with ... Islam while American-European policy differences could even cause the Atlantic Alliance to come unhinged."[14]

What is the geopolitical relevance of the Global Balkans? This area has 68 percent of world oil reserves and 41 percent of natural gas. In 2020, the United States, Europe and the Far East will consume 60% of world oil and gas. In such conditions, the interest of each geopolitical entity in the world energy

gas. In 2020, the United States, Europe and the Far East will consume 60% of world oil and gas. In such conditions, the interest of each geopolitical entity in the world energy reservoir is quite understandable. The matter now is how to stabilize this area so that its transformation into an energy supplier in the 21st century is not endangered. Taking into account the current US interest in the area and its *longue durée* geopolitical relevance, one might call it the New Heartland or the *Global Heartland*.

The New Heartland



The neighbouring countries to the Global Balkans – Russia, Turkey, Israel, India, Pakistan – have limited capabilities to contribute substantially to its stabilization. Israel is not seriously involved in the Global Balkans, while each of the others, starting with Russia, failed to do so in the past. Because of its failure in Afghanistan, Russia is not able to play a leading role in the region, India can not get involved due to its conflict with Pakistan, while Turkey takes a low profile because of the Kurdish issue. In such conditions, without the cooperation of the above countries, the US considered useful the participation of the new NATO countries (mainly Poland and Romania) to stabilize the Global Heartland. Access to the Global Heartland is critical, hence the relevance of Baltic and South Eastern European countries as a safe strategic base and of the Black Sea as a safe sea route.

With the American initiative to stabilize the Caucasus, Central Asia and the Gulf, one could conclude that the circle of global Euro-Atlantic strategy closes. "Atlantic" organizations have spread from Georgia to Kazakhstan in the former Soviet republics. Moreover, NATO is to get involved in Iraq. Practically, with the end of the Cold War, with NATO enlargement and the military interventions in Afghanistan and Iraq, one could notice the globalization of the Euro-Atlantic civilization, based on sea-power, with all of its economic (market), political (democracy), ideological (freedom) and technological (Internet) expressions.

In the 21st century, the Heartland to decide geopolitical supremacy is geographically Eurasiatic, but geopolitically it is Euro-Atlantic dominated. One might say the seapower has reached the heart of the land-power. The only challenge to the Euro-Atlantic supremacy might not be from Europe, because Germany and Russia are geopolitically neutralized, but from within the USA or from the Pacific, more exactly from China. If China changes its current political system, then most probably it will look outward and challenge the USA sea-power hegemony. Only with that "accident" the world would move to the Pacific era.

NOTES:

[1] Karl Hushofer, *Geopolitik der Pan Ideen*, Berlin, Zentral Verlag G.m.b.H, 1931. Haushofer (1869-1946) is known as the leading interwar German geopolitician.

[2] Alexander Dugin, 'From Sacred Geography to Geopolitics', published under the title "Ot sakral'noy geografii k geopolitike" in *Elementy*, No 4, and as Chapter 7 of *Misterii Yevrazii* (Moscow 1996). Trans from the Russian original by M Conserva.

[4] Alfred Thayer Mahan, 1840-1914, published *The Influence of Sea Power upon History* in 1890 and *The Influence of Sea Power upon the French Revolution and Empire* in 1892. According to his analysis of history, the great powers were those that maintained strong navies and merchant marines. He urged the United States forward in its naval building programmes.

[5] Nicholas John Spykman, *America's Strategy in World Politics*, New York: Harcourt Brace, 1942.

[6] Sir Halford Mackinder, English geopolitician. Educated at Oxford (1887–1905), he led the revival of British geographical learning. He established geography as an academic subject, teaching at the universities of Reading and London, and was (1903–8) director of the London School of Economics. He was a member of Parliament (1909–22) and later held various imperial posts. In *The Geographical Pivot of History* (1904), Mackinder propounded the view of Eurasia as the geographical pivot and "heartland" of history. The theory received little attention in Great Britain and the United States before World War II, but the idea of the heartland as a natural seat of power was adopted in Germany, notably by Karl Haushofer.

[7] Rudolf Kjeleen (1864-1922), a Swedish political scientist who coined the term *geopolitik* in 1899.

[8] Henry Kissinger, *Diplomacy*, Simon and Schuster, New York, 1995.

[9] Immanuel Wallerstein, *The Modern World System: Capitalist Agriculture and the Origins of the European World Economy in the Sixteenth Century*, New York: Academic Press, 1974.

[10] In 1919, Mackinder's main work was published in an updated edition with the title *Democratic Ideals and Reality*. Mackinder became "the grand old man of British geography" who, with the development of his New Geography, led the field from an age of exploration to an age of education (see Martin, Geoffrey J & James, Preston E, *All Possible Worlds: A History of Geographical Ideas*, Wiley Text Books, 1993.)

[11] Christopher Layne, "America as European Hegemon", in *The National Interest*, No 72, Summer 2003, pp17-31.

[12] Bulgaria's membership in NATO is, from my point of view, a "preventive membership" which means Bulgaria received the invitation to join the Alliance in 2004 because, if not invited, most probably would have turned its strategic orientation as it had done in the past. Bulgaria is a NATO member mainly to prevent its strategic turnover.

[13] Zbiegniew Brzezinski, "Hegemonic Quicksand", in *The National Interest*, No 74, Winter 2003/04, pp 5-17.

[14] Brzezinski, *op cit*, p 5.

A SWOT Analysis of the Romanian Public Administration

Mădălina Ivănică

Before performing a thorough analysis of the today-Romanian public administration, it will be useful to assess the positive and the negative aspects of the Romanian public system. This can be done quite easily by making a SWOT analysis.

The SWOT analysis is a technique that has appeared and has been comprehensively researched in the management area, later on being used for analyzing strategic performances. A concise definition of it would be: "systematic development and evaluation of past, present and future data to identify internal strengths and weaknesses and external threats and opportunities"[1].

The SWOT analysis can be used in many ways for developing an efficient strategic analysis. The most common way is to use it as a logical framework guiding systematic discussion of an entity's situation and the basic alternatives that the entity might consider.

An analysis of the Romanian public administration would take into consideration the following parameters:

- creating a relationship between the strengths and weaknesses of it and the positive achievements;
- the strengths and weaknesses will be approached from a competitive point of view;
- the gap between where the public administration *wishes to be* and where it is *now* will be presented in a realistic manner;
- the strengths and weaknesses and the opportunities and threats will be approached also realistically.[2]

Through a structured approached, the external opportunities and threats are systematically compared with the strengths and weaknesses. The main objective of this approach is to find the model that results from the combination of the internal and external situations of the researched entity.[3] Each of these four models is obtained by intersecting the strengths and the weaknesses with the opportunities and the threats. For this particular analysis, the most important models would be given by the intersection between the strengths and the opportunities with the weaknesses and the threats; the outcome of the analysis aims to discover the central problem and respectively, the possible solution to this.

Internal factors	**External factors**	
	Opportunities	*Threats*
Strengths	*Possible solutions*	
Weaknesses		*Central problem*

***Figure 1.* SWOT confrontation matrix**

This strategy allows the organizations to obtain a feasible balance between their external environment and internal capacities. The purpose of the strategy cannot be regarded as a passive answer to the opportunities and the threats coming from the external environment, but as a continuous and active

process of adapting the organization to answer the requirements of a changing environment[4].

The Romanian public administration is in a crucial period, taking into account the pressures exerted by the accession process. In December 1995, the European Council in Madrid has underlined the necessity of creating adequate conditions for the gradual and smooth integration of the candidate countries, especially through the adjustments undertaken by the national public administration. Reinforcing this theme, the European Commission has underlined in the Agenda 2000 the importance of a proper assimilation of the acquis in the national legislation, as well as the necessity of a proper implementation of it in all the relevant fields, through appropriate administrative and judicial structures. The proper implementation of the acquis represents an essential condition for being considered a trustworthy future member state of the European Union.[5]

A **strength** in the context of SWOT analysis is a resource, skill, or other advantage, relative to competitors and needs of the market an entity serves or expects to serve.[6]

In the case of the Romanian public administration we can consider as strengths the following aspects:

- the desire/the determination to make the reform of the local and central public administration;
- the increased involvement of the NGOs in the decision-making process;
- the establishment of specialized institutions that aim to offer training programs for the public civil servant in order to increase the performances of the Romanian public administration and the implementation of the relevant legislation in the field.

The eagerness to reform the Romanian public administration has been particularly revealed by the necessity of adapting the national institutional frameworks to those requested by the new market-economy system towards which Romania has started moving since 1989. Since 1995, when the Association Treaty between Romania and the European Union has been signed, the main objective for the foreign policy of Romania became the integration into the European and Atlantic structures. Nevertheless, this Euro-Atlantic integration would not have been feasible without a proper reform of the Romanian society.

Between 1990 and 2000, although the necessity to reform the local and central public administration has been several times reaffirmed, due to different internal and external factors, such as: the minimum experience in the administrative reform, the lack of adequate knowledge of politicians and of the public civil servants in matters regarding the reform of the public administration together with the lack of a clear and concrete legislative framework that could have supported the effective realization of the reform, the reform achieved the expected results only in a small extent. Therefore, for the period mentioned above, one can hardly consider that a reform of the system took place; it was more a transition period towards a capitalist society.

Beginning with 1998, Romania's capacity to fulfill the status of a member state of the EU has started to be permanently analyzed and evaluated in the Annual Report of the European Commission. For the first time, the necessity of a "general and complex" reform of the Romanian public administration is officially mentioned.

The Governmental Program for 2001-2004 tackles directly the reform of the public administration, starting with the critics of the European Commission from the Annual Report for Romania in 2000. Even though there has been a wholehearted political will to reform the administration, between 2000 and 2003 the reform process has not been properly followed, therefore in the Annual Report on Romania from 2003, the European Commission underlies once again "the limited capacity of the Romanian public administration to implement and apply the new legislation". In this context, the Ministry of Public Administration has issued in 2004 the so-called "Governmental Strategy concerning the Acceleration of the Reform of the Romanian Public Administration". This strategy aims to adapt the Romanian public administration to

the European standards. Furthermore, the public administration has to be permanently characterized by "transparency, predictability, responsibility, adaptation and efficiency"[7].

It is beyond any doubt the clear willingness to perform an ever-lasting and substantial reform of the Romanian public administration and in this view, the political willpower could be considered as a strength of the SWOT analysis.

The increased involvement of the NGOs in the decision-making process could be considered as a second strength of the SWOT analysis of the public administration in Romania. In the last three years, the NGOs sector became increasingly involved in drafting the laws aiming to increase the transparency and the democratization of the decisional process.

Several Consultation Councils in which representatives of the opposition parties, representatives of the trade unions and patronages or of different interest groups have been involved, have been created in the last years. This kind of consultations aims to increase the involvement of the civil society in the legislative process and, above all, to a better representation of people's interests.

In the Regular Report on Romania's Progress towards Accession from 2001 the European Commission mentions "the consultations with the social partners, with NGOs and with the business community concerning the drafting of legislation have been improved, but they still remain limited".[8]

In April 2002, by a Government decision has been decided the legal obligation of the administration to consult the business environment and the NGOs in drafting the legislation that could have an impact on the business environment. Moreover, also in 2002, by using the PHARE funds, it has been attempted to support the civil society in developing partnerships between the NGOs and the local and central authorities and to create networks of information points for the citizens. At this moment, the most active NGOs are those active in preserving the environment, consumer protection, human rights and child protection and those from the economic and social environments.

An essential condition for reforming a system is the existence of the institutions that have to ensure the functionality of the system. In the case of the Romanian public administration, starting with 2000, it has been attempted to adapt the administrative system to the requests ensuing from the status of a candidate country of the European Union. Therefore, *the establishment of specialized institutes for preparing the public civil servants, in order to professionalize the Romanian public administration and the adoption of* relevant *legislation in the field*, could be considered another strength of the SWOT analysis.

A first stage in the legislative development in the field has been the Law no. 188/1999 with regard to the Status of the Public civil servants together with the secondary legislation. In order to complete the Law no. 188/1999, the Law no. 161/2003 regarding additional measures that aimed to ensure the transparency in exercising the public duties, the public dignities and in the business environment as well as the prevention and the sanction of the corruption has been adopted.

The Law no. 188/1999 redefines the notion of public function and public civil servant. Furthermore, the Law introduces the category of *high public civil servant*, responsible with ensuring a smooth continuation and coherence of the administrative decisions necessary for implementing the public policies. This particular Law offers stability in function for the high level public civil servant, when the government may change. The Law also comprises provisions referring to the recruitment and promotion of the public civil servant, the length of the internship, the evaluation of the individual professional performances, the professional carrier, the redistribution and mobility of the public civil servant.

Regarding the institutional framework necessary to reform the administration, two institutions responsible with the reform of the public function have been created:

- National Agency of the Civil Servants – for the management of the public function;
- National Institute of Administration – for the continuous formation of the public civil servants.

Starting in 2004, the Observatory of the Public Function will be established. This institute will comprise representatives of the civil society, of the public institutions, of the trade unions and of the political parties. The aims of it are to ensure an increased transparency of the management of the public function and the independence of the body of civil servants.

A **weakness** is a limitation or deficiency in the resources, skills, or capabilities that seriously impedes the country's effective performance[9].

The Romanian public administration can be characterized by the following weaknesses:

- a low trust of the population regarding the local and central administrative structures;
- the lack of an experienced body of the public civil servant;
- low transparency in the decision-making process and high bureaucracy;
- corruption and political affiliation;
- reduced capacity in applying the public policies, including those referring to the administration of the structural funds.

For having a pubic administration that serves the citizen, a strong and confident image is needed. Nevertheless, in Romania, one of the weakest aspects of the local and central administrative system is represented by the *low trust of the population regarding the administrative structures.*

According to a survey conducted by the IMAS Institute in August 2003, the confidence of the population in the state' institutions is the following[10]: the government (31.4%) and the Parliament (25.2%) have the lowest percentage in population's confidence, while the church (91.9%), the army (76%) and the presidential institution (46.6%) are on the first three places in population's confidence. In other words, the public administration's institutions responsible with the drafting and the implementation of policies, in the case of the Government, with the national legislation, in the case of the Parliament, have the lowest percentage of confidence. The credibility of the public administration's institutions is essential in creating an efficient administrative environment that can satisfy the needs of the citizens.

Another weakness of the Romanian public administration is portrayed by *the lack of a body of experienced public civil servant.* In Romania, the total number of public functions in the local and central public administration is 110,426 from which 65,497, representing 59.3%, are in the central public administration, and 44,929, representing 40.7% are in the local public administration[11].

With regard to the degree of occupation of the public functions, from the total of 110,426 positions, 97,142 positions, representing 87.97%, are occupied, the rest of 13,824 positions, representing 12.03%, being vacant[12].

With regard to the type of studies, the number of public civil servant having a university degree is 54% while the number of those with medium studies is 46%[13].

The personnel from the Romanian public administration has, generally speaking, graduated a university, while the structure of specialization of the public civil servants reveals a quite extensive number of economists (17,537) and engineers (18,816), despite the reduced number of public civil servant with a degree in public administration (407), juridical sciences (4,268) or sociology and psychology (223)[14].

Analyzing the information portrayed above, one would reach the conclusion that in the Romanian public administration the number of personnel with specialized studies is quite low. Targeting candidates with specialized studies in the public administration would increase the professionalism of the body of public civil servant. Furthermore, by employing personnel with specialized studies, the confidence of the population in the national public administration will be also increased.

An additional weakness of the Romanian public administration is depicted by the *reduced degree of transparency in the decision-making process* and by the extremely *bureaucratic administrative procedures.* In the Regular Report on Romania's Progress towards Accession from 1998, the European Commission had notified the Romanian government about the necessity of decentralizing and increasing transparency of the decision-making process from the public

administration. The same advices have been mentioned in the 1999 Report, where it is specifically mentioned: "the present provisions referring to the public civil servants raise some questions with regard to the legality, transparency and professional independence"[15]. In 2000, the European Commission has reached the following conclusion: "particular attention has to be devoted to the decentralization process and it has to be ensured that the decentralized responsibilities are sustained by sufficient human and financial resources at the local level"[16]. The problem of decentralization and the lack of transparency have been underlined again in the 2003 Report where it is mentioned, "the Romanian administrative system continues to be characterized by lengthy procedures, by a limited transparency and by political restraints over its capacity"[17].

The decentralization process and the administrative procedures have been negative characteristics for the Romanian public administration from the beginning of the monitoring process. During the past seven years, several attempts have been made to tackle these thorny issues, however the results have not come out yet.

The decentralization of the decision-making process refers to an increased involvement of the local administrations in the decision-making process, aiming at implementing the principle of subsidiarity and particularly at taking the most appropriate decisions at the corresponding levels. Following the integration in the European Union, the local public authorities will have a particular role in the decision-making process, due to the fact that the integration will take place firstly at the local level. The process of integration requests an active role of the regions in developing and implementing the European legislation. By actively taking part at the decisional process, the local public administration will gradually became more professional in performing its duties.

Regarding the bureaucratic administrative procedures, one could observe that this characteristic is present in almost any other European public administration. Romania's public administration is characterized by:

- lengthy intra and inter-institutional processes;
- the lack of an efficient formal and informal institutional communicational system;
- the lack of an appropriate data base that should comprise all the information the citizens need on a daily basis;
- the lack of an effcient communication strategy at the governmental level.

One of the weakest aspects that characterize the Romanian public administration is represented by the *corruption and by the political constraints.*

In Romania the phenomenon of corruption is deeply rooted at all societal levels and represents the highest risk that could hamper Romania's accession in the EU: "few progress has been achieved in reducing the corruption; a better coordination among different initiatives for combating corruption is extremely needed"[18]. In 2001, the problem of corruption has been once again underlined in the Regular Report released by the European Commission: "corruption is still a major problem and almost nothing has been done to remove it"[19]. The 2002 Report mentions that "new institutional frameworks have been created to combat the phenomenon of corruption, but their effectiveness could have hardly been assessed"[20]. The Regular Reports continued to monitor very strictly this phenomenon, therefore the 2003 Report mentions: "corruption continues to be widely spread and its effects could be observed everywhere in the society. In the monitoring period several measures aiming to reduce it have been introduced, however, the implementation of the legislation has been reduced. It is of a primordial importance to achieve the desired goals and to increase the efforts aiming to remove the corruption from society"[21]. Taking into consideration various studies and evaluations performed by national and international organizations, the European Commission concluded in the 2004 Regular Report that "corruption remains a major problem for Romania being widely spread at all levels"[22].

Corruption in Romania is considered a "state problem". It is considered that corruption takes place at the political and juridical level. In 2001, the Public Opinion Barometer revealed that 94% of the population considers that the level of corruption has increased after 2000. In 2004, the Gfk (Growth for Knowledge), in the working document "The climate of corruption in Romania" depicted the following data: 66% of the Romanians consider that they are living in an increased corrupt environment[23]. Comparing the results with those of 2001, the percentage of Romanians considering that the bribe has become a normal component of life has increased from 24% to 33%. In 2001, 39% of the Romanians were considering that the actions aiming to remove corruption were useless due to the ever-lasting existence of it. The percentages of 2004 reveal a worrying increase to 54%[24].

In Transparency International Corruption Perception Index from 2003, Romania was ranked on the 85th position out of the 133 existent positions, having an index of 2.8 (on a scale of zero to ten, ten being the less corrupt)[25]. In the same index Bulgaria has been ranked on the 55th position with an index on 3.9, Poland on the 65th position with an index of 3.6 and Russia on 87th position with an index of 2.7.

The General Barometer of Corruption, another indicator of Transparency International, provides information with regard to the public perception on corruption. In the case of Romania, the population is expecting an increase of the level of corruption (27.2%), while the sectors of private life and family, business environment and political life are severely affected by corruption: 39.5% for the private life and family, 67.2% for the business environment and 71.9% for the political life (deemed to be mentioned is that the for each category the possible answers were: insignificant, quite significant and very significant).

Among the surveyed sectors that had been considered corrupted, one could distinguish the public health sector with 35%, justice with 25%, police with 15% and public administration with 12%[26]. The most striking aspect is that the most tolerant persons are those with an average age between fifty-five and sixty-four (40%) while almost a third of the young people with an average age between fifteen and twenty-four considers bribe as a normal phenomenon.

With regard to the moral and psychological reasons that determine people to accept taking the bribe, no thorough relevant researches have been undertaken. The University professor Florin Tudose considers corruption as something very deeply rooted in the Romanian society, being caused by the dominance of the Ottoman Empire throughout the centuries. Corruption had become a major issue in the pre and interwar periods. Nowadays, it seems that the phenomenon of corruption could be tackled through a substantial increase in the welfare of those categories that are to corruption sensitive.

From an attitudinal point of view, the psychologists consider that "the solution for removing corruption from society would be a cease in transmitting wrong mentalities by trying to make the young categories more aware about this process. The citizens should better know what their rights in society are and their confidence in laws has to be increased"[27].

The last relevant weakness of the Romanian public administration is the *limited capacity of implementing the public policies, including those referring to a proper allocation of the structural funds.*

From 2001 onwards, the European Commission has started notifying the Romanian authorities about the incapacity to use efficiently the structural funds allocated for Romania; therefore, in the 2001, 2002 and 2003 Regular Reports the notes referring to this problem are always the same: "while some sectors of the administration are characterized by an efficient allocation of resources, there are still sectors that are lagging behind in terms of efficiency. The poor performances in these sectors are of a particular concern for the European Union. Moreover, these concerns are stretching far beyond the adoption of the acquis and

interfere with the management of the financial assistance of the European Commission"[28]. In the 2004 Regular Report the European Commission mentions that "Romania has started tackling the problem of the public administration by implementing feasible reforms. The concerns of the European Commission are stretching beyond the implementation of the acquis and apply to the management of the financial assistance of the European Commission"[29].

For improving the capacity of managing the community funds, in 2002 the "Strategic Plan for enhancing the administrative and management systems of implementing the programs financed by the European Union" has been launched. The monitoring and reporting process is conducted by the National Coordinator of Assistance who is in charge to submit a detailed report to the European Commission on a yearly basis. Taking into account the conclusion of the 2004 Regular Report of the European Commission, it can be observed that 2003 cannot be considered a further step in enhancing the management of the community funds.

The next stage in the management of the community funds is represented by the implementation of the Extended Decentralized Implementation System (EDIS). There are four phases that have to undertake before implementing the EDIS:

- identifying the disparities;
- removing the disparities;
- evaluating the conformity of the results;
- assessing the conformity of the results with the European Commission.

In the particular case of Romania, the first two stages have been already fulfilled, what still has to be done is to apply the third and the fourth stages. To be fully prepared to apply these stages, Romania will get technical assistance from the European Commission. The degree of seriousness and efficiency in fulfilling the last stages will determine the degree of capacity ensured by Romania in an efficient management of the community funds.

An opportunity is a major favourable situation in the environment[30], which will facilitate the path of implementing the strategy envisioned. The opportunities existing in the Romanian public administration are:

- the political willingness of the European Union to support Romanian membership to the Union;
- the flow of pre-accession, and following the accession, of structural and cohesion funds;
- the support of the European expertise in reforming the public administration.

One of the major opportunities for Romania is represented by *the strong political commitments and willingness showed by the European Union* in supporting the membership of Romania to the European Union. At each European Council, Romania has received positive evaluations regarding the closing dates of the negotiations, of signing the Accession Treaty and of the official membership. Going back to 2000, when the accession negotiations had started, Romania has followed a road-map aiming to close the negotiations at the end of 2004, to conclude the Accession Treaty in 2005 and to become an official member state of the European Union in 2007.

Significant efforts have been performed both by Romania and the European Union in making these dates feasible. Through the Regular Reports issued every year by the European Commission, the negative aspects and the progress achieved by Romania have been thoroughly analyzed. The positive aspects of the 2004 Report which granted the status of a functioning market-economy for Romania represent a further step in accomplishing the settled membership calendar. It is beyond any doubt that the negotiations will be concluded only if the Romanian government fulfills all the requested criteria for the membership in the EU and ensures a proper implementation of the acquis communautaire.

The European Union has proved several times its willingness to integrate Romania in the Union, alongside the other countries that joined the Union this year. In the Accession Treaties of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, signed in June 2003 in Athens, it is explicitly mentioned: "the member states of the Union express their full support towards the irreversibility of the enlargement process... the main objective is to

welcome Bulgaria and Romania as full members of the Union in 2007".

Another major opportunity for Romania is portrayed by *the flow of pre-accession and following the accession, of the structural and cohesion funds.*

For the National *PHARE Program* 2001, 241.35 millions euro have been contracted, representing 96.97%. In addition, in the same year, the funds allocated for trans-frontier cooperation represented 95.7% (12.44 millions euro from the 13 millions which were allocated). For 2003, 276.5 millions euro have been allocated for Romania, from which 265.5 millions for the National PHARE Program and 11 millions for the two trans-frontier cooperation programs with Bulgaria and Hungary. Through the National PHARE Program, several other sub-programs and projects, such as the sub-programs "Political criteria" (34.9 millions euro), "Economic criteria" (11.4 millions euro), "Strengthening the administrative capacities" (27.395 millions euro) and "Economic and social cohesion" (112.005 millions euro) are being financed. For the period 2004-2006, a Planning document has been issued, establishing a global allocation for the National Program to 356.9 millions euro for 2004, 396.9 millions euro for 2005 and 438.5 millions euro for 2006.

With regard to the *ISPA Program*, Romania has concluded 40 ISPA Financing Agreements, representing approximately 2 billions euro. The total value of the contracts concluded for the environment and transport field reached in June 2004 the amount of approximately 530 millions euro, representing roughly 27% of the total value of the financing agreements. Until the end of 2004, thirteen other contracts representing 367 millions are supposed to be concluded.

For the *SAPARD Program*, in 2003, the Annual Agreement of Financing concluded between the Romanian government and the European Commission mentions the amount of 162.223.285 millions euro and establishes a deadline of availability to December 31st 2006. Following a redistribution of some of the community financial resources available for the SAPARD Program, the aimed contribution for Romania for 2003 has been supplemented with the amount of 1.115.691 millions euro, the total value reaching the amount of 163.339.076 millions euro.

Apart from the financial aspect, another opportunity for Romania is represented by *the support of the European expertise in the reforming process of the public administration.*

The bilateral assistance aims to make possible the membership of Romania. It takes place in different sectors such as: agriculture, transport, industry, environment, finance, education, research, regional development, public administration, infrastructure, development of the civil society.

With regard to the efficiency and the development of the public administration, Romania has agreements for bilateral assistance with Germany, the Netherlands, Denmark and Greece.

Additionally, from February 2004, Romania has the support of Denmark for projects concerning the better preparation of the public civil servants. The cooperation existent between Greece and Romania has a financial assistance of 70.63 millions euro for the period 2002-2006, from which 79% from funds devoted to assisting the local and central administration. The cover area of this cooperation aims to develop administrative capacities that are in conformity with the accession preparation to the European Union.

Twinning projects represent another opportunity to gain European expertise in the domain of the public administration. During 2004, partners from the United Kingdom, Germany, France, Spain, Italy, Greece and the Netherlands will provide technical assistance in areas such as: public administration, environment, competition, border control, public finances, social environment and transports.

Taking into consideration all these opportunities of European expertise, Romania should be able to better incorporate the requests to reform the public administration and to make it more modern and efficient.

Threats are major unfavourable situations in the environment. They represent key impediments to the current and desired position. In Romania the main threats are:

- the general elections in November 2004;

- the changes within the European institutions;

The results of the elections that will take place at the end of November 2004 will have a major impact on the process of Romania's accession to the European Union. In February 2000, when Romania opened the negotiations with the European Union, the government was led by the Democratic Convention. During that year, five chapters have been provisionally closed. Most of them have been easy negotiable chapters and they did not require a fundamental change of the Romanian legislation. In December 2000, following the general elections, the government has become social-democrat and its main goal was the integration of Romania in the Euro-Atlantic structures, particularly into NATO and the EU. It is likely that the negotiations will be closed at the end of November 2004, this diplomatic success promoting the governing party as a trustworthy and reliable party that reached its goal, the integration within NATO and the EU.

In the context of a liberal-democrat government coming as the result of the elections in November 2004, the accession process could be severely hampered. Due to the strict monitoring process done by the European Commission in fulfilling all the commitments taken during accession negotiations, any delay occurring in implementing the proper legislation could jeopardize Romania's membership in the EU in 2007 and postpone it to 2008.

From this point of view, the continuity in the foreign policy of the government and the creation of a feasible framework of cooperation between the governing party and the opposition would be much more preferable. The time necessary for a new government to get used with the mechanics and the dynamics of the integration process could prove fatal for Romania's membership in the EU in 2007.

An additional threat, this time an external one, is related with *the changes within the European institutions*, especially the appointment of a new European Commission starting from November 1st, 2004.

After the last enlargement which took place on May 1st 2004, the decisional process within the EU has become increasingly lengthy. Within the Council of Ministers, the number of members has been increased from fifteen to twenty-five, while the new European Commission will have twenty-five commissioners from November 1st 2004. In this respect, if the negotiations had not been closed until the new Commission starts its mandate, foreseeable delays or even stagnations could hamper the accession process of Romania and Bulgaria. If the present Commission, together with the enlargement commissioner, Mr. Günter Verheugen, has expressed its support towards Romania's membership in the EU in 2007, not the same opinion was expressed by the coming Commission.

The new European Commission will have one commissioner from each member state, following the agreements reached in the Nice Treaty. The provisions from Nice Treaty are valid until 2009, when the European Constitution, should it be approved by each member state of the Union, will come into force. Due to the internal difficulties many member states are facing after the enlargement, their willingness to move forward with the enlargement could decrease. Within the Council of Ministers, the decisions will be taken by twenty-five member states, not anymore by the former fifteen member states of the Union. The decisions have to be taken by unanimity; therefore an increased activity in proving the fulfillment of the undertaken commitments and increased positive lobby are fundamental for Romania's positive evaluation.

Another aspect would be the one referring to the problems with which the European Commission is faced and that could postpone the enlargement process until a more positive environment will be reached. Starting with the difficulties in appointing the European Commission that should answer to the requests of the hearing committees of the European Parliament and to the interests of the member states, and continuing with the huge economic problems the EU is facing in the last years, these problems could modify the priorities of the EU regarding the forthcoming enlargement. The ten new Member States have not brought additional efficiency or value

added to the EU; what they brought in the Union were their internal economic and social problems, those being added to the already existing problems of the former EU. Nevertheless, one could not disregard the advantages brought by the ten new Member State in terms of the contribution (5%) to the GDP of the Union and by opening their market to other European companies.

In these conditions, the only thing Romania can do is to hope that the new European Commission will reveal the same willingness to continue the enlargement process as the Prodi's Commission did and that the new Council of Minister will endorse in unanimity its membership to the EU in 2007.

After identifying all the major elements of the SWOT analysis, the SWOT confrontation matrix will be built. For the present analysis, of a particular importance are the fields in which the strengths are confronting the opportunities and the weaknesses are confronting the threats. These confrontations will lead towards the central problem and will ease the process of identifying the possible solutions.

The **Central Problem** outlines the major environmental threats that a country is facing from a position of relative weakness, whereas **Possible Solutions** focus on the environmental opportunities and the numerous strengths, which encourage the country to pursuit those opportunities. This pattern suggests growth-oriented strategies which exploit the favourable match whereas the central problem calls for strategies that reduce or redirect involvement of resources.

In this particular case of the SWOT analysis concerning the Romanian public administration, the central problems are:

- corruption;
- decentralization and of the transparency of the decision-making process;
- the necessity to professionalize the body of the public civil servants;
- missing 2007 as the date of accession in the EU.

Taking into account all the four models that have already been portrayed, some possible solutions to sort them out could already be found. Therefore, the solutions for each central problem depicted above will be presented in the following paragraphs.

The problem of *corruption* is of a particular concern and can represent the main reason for not joining the European Union in 2007. The first step towards solving it had been the acknowledgement of the government about its presence within the Romanian society and the attempts undertook by the government to remove it from the system. The legislative and institutional changes from the past years demonstrate the clear trend towards a systematic settling of the mechanisms envisaged to combat corruption. Meanwhile, an increase in the number of institutional controlling, preventing, investigating and sanctioning bodies could be observed.

With regard to the *institutional changes*, it can be mentioned that in 2002 the National Prosecutor Anticorruption Office (PNA) has become operational. Romania is involved in the Initiative of the Anticorruption Stability Pact, sponsored by the OECD secretariat. Furthermore, Romania is member of the Group of State against Corruption of the Council of Europe (GRECO). The National Prosecutor Anticorruption Office has designated a prosecutor within the GRECO for the second evaluation of 2002-2005.

From the *legislative point of view*, in 2003 the following progresses have been achieved:

- April 2003 – an anticorruption legislative program has been adopted, using the mechanism of the trust vote;
- The requests concerning the personal interests of the politicians have been extended;
- The concept of "conflict of interests" has been introduced and the incompatible interests with the function of public civil servant have been considerably extended;
- The law concerning the funding of the political parties and of the political campaigns has been endorsed by the Parliament in March 2003. The political parties are obliged, following this law, to publish detailed lists with their main sponsors and with the exact amount of money that has been donated;

With regard to an increase in making the population more aware about corruption, a national campaign called "Nu da spaga"[31]

("Do not bribe") has been launched. The campaign targets mainly the young people, with an average age between fifteen and twenty-five years. The objectives of the campaign are to make people conscious about the phenomenon of corruption and why this phenomenon should not be encouraged. Remarkable at this point is that the promoters of this campaign are the NGOs, governmental bodies and international organizations.

The *decentralization and the transparency of the decision-making process* have represented other concerns for the government, taking into account the negative signals given by the European Commission with regard to these two aspects of the Romanian public administration. The Report from 2003 mentions that in Romania "in the past three years constant transfers of responsibilities towards local authorities such as public health, education, transport, services and public utilities took place"[32].

With regard to the *legislative process*, certain laws ensured the decentralization and the transparency of the central decision-making process:

- January 2003 – the sunshine law, defining the procedural requests for ensuring the transparency of the decision-making process, has been adopted;
- The Law no. 161/2003 regarding some measures aiming to ensure transparency in exercising public functions, public dignities and in the business environment had been adopted;
- In May 2004, the project for endorsing the Law concerning the decentralization has been approved, the Law being in the Parliamentary procedure.

Concerning the decentralization of the *financial environment*, among the normative acts one can find the followings: the Fiscal Code, the Code for Fiscal Procedure, the Law no 108/2004 regarding the local public finances.

The *e-governance initiative* is quite recent in Romania. Nevertheless, it represents a viable solution for increasing the transparency of the administrative procedures. Although there are few administrative procedures that can be applied through e-governance, this remains a powerful tool which has to be continuously developed by the institutions. Meanwhile, it is very important to make people aware and responsible and guide them towards an increased use of e-governance.

In the aspect of *creating a body of professional public civil servants*, the solution would be to create institutions that would offer courses and trainings to specialize the public civil servants, as well as implementing a coherent legislation which should clearly define their responsibilities and the norms of their profession.

A first step in the *legislative domain* has been the elaboration of the Law no. 188/1999 regarding the Status of the public civil servants, as well as the secondary legislation adopted.

With regard to the *creation of institutions* that aim to professionalize the body of the public civil servants, in the past years the following institutions have been created:

- the National Institute of Public Administration (INA) – for the management of the public function
- the National Agency of the Public Civil Servants (ANFP) – for continuous specialization of the public civil servants

The National Institute of Public Administration has as main objective the creation of public civil servants. In this aspect, several programs aimed to improve, to prepare and to specialize the public civil servants that have been created. Furthermore, an increased number of master programs have been oriented towards satisfying the necessity of every public civil servant.

The last central problem that has emerged from the present SWOT analysis *is the chance of missing 2007* as the date of accession in the European Union. The solutions for this problem are represented mainly by the continuity of the public policies launched by the government and by the strict fulfillment of the undertaken commitments. At the political level, enhancing the cooperation with the governments of the member states of the European Union is a prerequisite in Romania's membership to the EU in 2007. Furthermore, a more efficient campaign of external communication would be very welcomed.

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La réforme de la Convention de Dublin

Vasilica Mucea

Introduction

La Convention de Dublin relative à la détermination de l'Etat responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres des Communautés européennes, adoptée en 1990, a mal fonctionné et le traité d'Amsterdam a instaure la base juridique de son remplacement par un règlement communautaire. Dans ses travaux préparatoires, la Commission proposait une réforme radicale du système qui rénovait l'esprit du système Dublin et pouvait en assurer l'efficacité.

Lors du Conseil européen de Tampere de 1999, les Etats membres de l'Union européenne sont convenus de mettre en place un régime d'asile européen commun et comportant, à court terme, une méthode claire et opérationnelle pour déterminer l'Etat membre responsable de l'examen d'une demande d'asile. C'est à cette fin qu'a été adopte le règlement 343/2003 du Conseil du 18 février 2003 établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers [1]. Le dispositif, désormais dénomme «Dublin 2», fut rendu opérationnel par l'adoption du règlement d'application le 2 septembre 2003 [2].

Les deux règlements de février et septembre 2003 remplacent un instrument de droit international, la Convention de Dublin [3], qui fut adoptée en 1990 pour tenter de répondre a trois problèmes rencontrés par les Etats en matière d'asile. Le premier problème est celui des migrations dites secondaires des demandeurs d'asile dans la Communauté européenne. Il s'agit de l'hypothèse où un demandeur d'asile entre dans la CE par un Etat, dans lequel il ne dépose pas de demande d'asile, puis voyage jusqu'a un autre Etat où il demande l'asile car il considère que ce dernier pays lui offre une protection plus favorable (protection contre le refoulement, droits économiques, sociaux etc.). Les Etats ont décidé d'empêcher ces migrations secondaires car elles entraînent une répartition très inégale des demandeurs d'asile entre eux ainsi que des charges financières très disparates. Le deuxième problème est celui des demandes d'asile multiples qui surchargent les administrations nationales chargées du traitement des demandes d'asile. Enfin, le troisième problème fut désigné par l'appellation «réfugiés sur orbite». Il s'agit de la situation de personnes ayant déposé une demande d'asile dans plusieurs Etats quand aucun Etat ne se considère responsable du traitement de leur demande.

Pour résoudre ces trois problèmes, la Convention de Dublin a consacré le principe de l'unicité de l'Etat compétent pour examiner une demande d'asile. Ce principe signifie qu'un seul Etat partie à la Convention, désigné sur la base de six critères [4] est responsable de l'examen du dossier d'un demandeur d'asile. Le système préserve les ressources des Etats car si une personne dépose plusieurs demandes d'asile, un seul Etat examine le dossier. Le principe garantit également que chaque demande d'asile présentée en Europe sera examinée, et répond ainsi au problème des réfugiés sur orbite. Une fois déterminée, la responsabilité entraînée pour l'Etat membre concerne l'obligation d'admettre le demandeur d'asile sur son territoire, de traiter sa demande et, le cas échéant, de le réadmettre s'il s'est rendu sans autorisation dans un autre Etat membre [5].

Malgré les décisions du comité 18 (comité chargé par l'article 18 de la bonne application de la Convention), l'application de la Convention, entrée en vigueur en 1997 [6], fut rapidement problématique. Ainsi, le mécanisme de désignation de l'Etat responsable du traitement de la demande d'asile s'est avéré inefficace car contourné par les demandeurs d'asile préférant souvent une situation irrégulière et précaire à l'application des critères Dublin [7]. De nombreuses stratégies d'évitement du dispositif Dublin ont été relevées [8]. Dans de nombreux cas, le système Dublin a également porté atteinte à l'unité familiale des demandeurs d'asile et réfugiés, et ce malgré l'existence de la clause dérogatoire dite humanitaire permettant à un Etat non compétent d'examiner une demande d'asile pour des raisons humanitaires fondées notamment sur des motifs familiaux (article 3-4). En effet, la Convention n'a jamais été conçue comme une norme conférant des droits subjectifs aux demandeurs d'asile et l'application de cette clause est laissée à la discrétion des Etats.

Enfin, du point de vue des Etats, le système n'est pas non plus apparu performant: le système s'est avéré coûteux pour de faibles résultats [9]. L'application des critères Dublin a été minée par des problèmes de communication entre les Etats et des difficultés de preuve [10]. La lenteur de la détermination de l'Etat responsable a rendu précaire la situation des demandeurs d'asile et les transferts prévus par la Convention ont concerné un nombre très faible de demandeurs d'asile[11]. Sans doute parce qu'il repose sur une fiction – en ce qu'il prétend pouvoir répartir, sur la base de critères préétablis, des personnes entre 15 Etats, sans prendre en compte ni l'intérêt des Etats ni celui des personnes[12], ni les différences de législation existant entre les Etats[13] – le dispositif d'origine est un échec.

C'est le traité d'Amsterdam qui a instauré la base juridique pour l'adoption d'une norme communautaire établissant les critères et mécanismes de détermination de l'Etat responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres (article 63-1-a). Il fut en effet prévu en 1997 de remplacer la Convention de Dublin par une norme directement et uniformément applicable sur le territoire communautaire[14]. La Commission a préparé le futur règlement par une série d'études préparatoires (la Convention de Dublin fut évaluée en 2000 et 2001) [15] et une propositions de règlement fut déposée en octobre 2001 [16]. Soucieuse d'assurer l'efficacité du dispositif Dublin sans pour autant modifier la logique de 1990, la Commission a déposé une proposition « offensive ». Elle préconisait diverses dispositions qui limitaient de façon drastique l'autonomie des demandeurs d'asile, empêchaient les demandeurs d'asile de contourner le mécanisme de détermination de l'Etat responsable et imposaient aux Etats un contrôle très strict des flux migratoires. Mais cette proposition était une impasse: elle portait atteinte aux obligations internationales des Etats et empiétait sur la compétence des Etats. De manière générale, l'approche préconisée par la Commission contredisait l'intention exprimée par les Etats lors du Conseil européen de Tampere de mettre en place un régime d'asile européen fondé sur l'application intégrale et globale de la Convention de Genève [17].

Le règlement 343/2003 est une version épurée de la proposition de la Commission. Il met en place un dispositif qui doit être examiné avec attention. Le système Dublin a rarement les honneurs des commentaires doctrinaux car c'est un dispositif technique qui n'affecte pas directement la substance des droits nationaux de l'asile. Pourtant, un examen attentif de la réforme de la Convention de 1990 révèle les contradictions et insuffisances de l'approche des Etats face au phénomène migratoire particulier qui est l'asile. Le système Dublin témoigne des atermoiements des institutions communautaires et des Etats face à une réalité qu'il est difficile d'appréhender au niveau européen et de régir par le droit. C'est pourquoi le présent article propose une analyse du système Dublin 2, en s'attachant à sa genèse et à ses possibles conséquences. Il s'intéresse en particulier aux options politiques privilégiées par le Conseil, lorsqu'elles diffèrent de la proposition de la Commission. Les choix opérés révèlent les limites d'un mécanisme qui bien souvent s'avère inadapté aux réalités européennes de l'asile.

I. L'abandon des dispositions offensives préconisées par la Commission

Le règlement Dublin doit être analysé par comparaison avec la proposition déposée par la Commission le 30 octobre 2001. Cette proposition poursuivait un objectif principal: assurer l'effectivité du dispositif Dublin. A cette fin, les dispositions préconisées revalaient une approche offensive des migrations d'asile. Mais le Conseil a opté pour une attitude plus modérée et surtout conforme à la légalité. Il reconduit le lien conceptuel entre le système Dublin et l'exigence de contrôle des frontières mais renonce à transformer le système Dublin en un instrument de lutte contre l'immigration clandestine.

1. Retour à la légalité

Pour assurer l'efficacité du dispositif Dublin, la Commission proposait deux dispositions empêchant les demandeurs d'asile de contourner ou éviter l'application des critères de désignation de l'Etat responsable. La première est le projet d'article 4-3 qui prévoyait que la substitution d'une demande de protection sur un autre fondement que la Convention de Genève à une demande d'asile dûment introduite «ne fait pas obstacle à la poursuite de la procédure de détermination de l'Etat responsable». L'objectif de la Commission était d'empêcher un demandeur d'asile de retirer sa demande de reconnaissance de la qualité de réfugié et de la remplacer par une demande de protection subsidiaire dans le seul but de faire échec à l'application des critères Dublin et de pouvoir ainsi échapper au transfert. La deuxième disposition est du même type: au titre du projet d'article 20-2, la décision de transfert d'un demandeur d'asile vers l'Etat responsable de l'examen de sa demande était susceptible de recours juridictionnel, mais le recours ne pouvait pas avoir d'effet suspensif. La Commission préconisait la suppression de l'effet suspensif de l'appel pour éviter un recours considéré comme dilatoire et empêcher les demandeurs d'asile de profiter de la période de suspension pour disparaître.

Dans la version finale du règlement, ces deux articles ont simplement disparu. Plusieurs raisons expliquent l'abandon de ces dispositions, l'une d'elles étant la volonté du Conseil de réaliser l'objectif réaffirmé à Tampere d'une politique communautaire d'asile conforme à la Convention de Genève et aux obligations internationales des Etats.

§ 1. *La mise en conformité avec la légalité internationale*

L'application de l'article 20-2 était problématique, dans la mesure où elle risquait de conduire les Etats à une situation de violation de leurs obligations au regard de la Convention de Genève et de la Convention européenne des droits de l'homme. Pour justifier cette disposition, la Commission avait en effet dû recourir à la fiction de l'équivalence des niveaux de protection en Europe. Ainsi elle considérait que «un transfert vers un autre Etat membre n'étant pas de nature à causer à la personne concernée un préjudice grave et difficilement irréparable, il n'est pas nécessaire que l'exécution du transfert soit suspendue dans l'attente du résultat de la procédure contentieuse » [18]. De même elle estimait que la proposition de maintien de la procédure Dublin en cas de modification de la demande de protection « ne lèse en rien les personnes concernées puisque les Etats membres ont tous souscrit aux mêmes obligations en ce qui concerne le respect des droits fondamentaux, la protection contre la torture et les peines et traitements inhumains ou dégradants et la protection contre le refoulement. »[19]

Cette fiction de l'équivalence des protections [20] n'est pourtant pas acceptable. Elle a été considérée comme un cas grave de myopie [21] susceptible d'entraîner une violation du droit international. On peut en effet se représenter le risque que représente la suppression de l'effet suspensif, pour un demandeur d'asile persécuté par des agents non étatiques, qui voit désigné pour l'examen de sa demande un Etat membre considérant que ce type de persécution n'entre pas dans le champ d'application de la Convention de Genève, et risque le refoulement dans son pays d'origine. Un tel transfert, qui équivaudrait à un

refoulement indirect, constitue une violation de la Convention de Genève et de la Convention européenne des droits de l'homme [22]. Le projet d'article 20-2 qui interdit aux juges nationaux de suspendre l'application du transfert quand le transfert est préjudiciable au demandeur d'asile, fut donc logiquement critique par l'ensemble des observateurs [23].

Le règlement évite ces griefs d'illégalité et n'interdit plus aux juges de prononcer l'effet suspensif de Pappel contre le transfert. Il ne prévoit cependant pas un effet suspensif systématique. La voie retenue est une solution médiane puisque le règlement admet, dans ses articles 19 final et 20, que la décision « n'a pas d'effet suspensif sur l'exécution du transfert, sauf lorsque les tribunaux ou les instances compétentes le décident, au cas par cas, si la législation nationale le permet ».

L'abandon des projets d'articles 4-3 et 20-2 trouve également sa source dans le souci de la conformité au traite CE, en particulier à la lettre de la base juridique du règlement Dublin, l'article 63-1-a TCE.

§ 2. *Le respect de la légalité communautaire*

Les deux projets d'articles étaient critiquables car non conformes à l'article 63-1-a TCE, disposition sur laquelle est fondé le règlement Dublin. La proposition d'article 20-2, tout d'abord, était contestable. Au titre des articles 20-1 et 21-1 de la proposition de règlement, une décision de transfert ne peut en effet être prise qu'**après** la détermination de l'Etat responsable du traitement de la demande. L'application de l'article 20-2 supprimant l'effet suspensif d'un transfert ne pourrait donc avoir lieu qu'**après** la désignation de l' Etat compétent. Dès lors la base juridique appropriée pour l'article 20-2 ne pouvait être l'article 63-1-a TCE qui vise exclusivement les «critères et mécanismes permettant de déterminer l'Etat responsable de l'examen d'une demande d'asile ». La seule base juridique envisageable pour une disposition telle que le projet d'article 20-2 était donc l'article 63-1-d TCE qui prévoit l'adoption de normes minimales concernant la procédure d'octroi ou de retrait du statut de réfugié dans les Etats membres. Or, ce même article 63-1-d TCE admet l'adoption ou le maintien par les Etats de mesures nationales plus favorables. En revanche le projet d'article 20-2 empêchait tout Etat d'avoir recours à une disposition plus favorable puisque le juge national ne pouvait pas suspendre l'application du transfert. Cette rigidité réalisait les craintes de Gregor Noll de voir le règlement Dublin, instrument de droit communautaire uniformément appliqué sur le territoire européen, supprimer tout espace pour les pratiques nationales plus généreuses[24]. L'empiétement sur la compétence de l'article 63-1-d était d'autant plus problématique que sur ce fondement est en discussion la proposition de directive procédure[25] dont l'article 33-1 prévoit que l'appel a un effet suspensif. La proposition d'article 20-2 était donc en contradiction à la fois avec le traité CE et avec la proposition de directive procédure. En renonçant au projet d'article 20-2, le Conseil semble donc admettre que le règlement Dublin n'est qu'un des six moyens prévus par l'article 63 TCE pour réaliser la politique européenne d'asile. Il doit contribuer à la réalisation de la politique d'asile et complète pour cela les directives d'harmonisation prévues ou en cours d'adoption, mais il ne saurait se substituer à ces mesures ni y porter atteinte.

C'est probablement le même raisonnement qui sous-tend le retrait du projet d'article 4-3. L'adoption du texte sur la continuation du mécanisme Dublin en cas de retrait de la demande de statut de réfugié devait permettre, selon la Commission, «de mettre à égalité les Etats membres où existent des procédures distinctes pour accéder à des formes de protection complémentaires avec les Etats membres où, par l'effet d'une procédure unique, la détermination de la forme de protection appropriée n'est pas laissée au choix du demandeur ». La Commission s'efforçait donc de neutraliser les effets des différences de législation. Elle considérait que lorsque, dans les Etats membres où cela est rendu possible par l'existence de procédures distinctes, un demandeur d'asile modifie en cours de procédure la nature de sa demande de protection, en particulier dans le but d'échapper à l'application du dispositif de détermination de l'Etat responsable, ce choix

du demandeur d'asile ne devrait, en principe, pas faire obstacle à la continuation de la procédure. En ne permettant plus aux demandeurs d'asile de contourner le dispositif Dublin par l'utilisation de règles spécifiques à certains Etats, la Commission voulait donc assurer une application uniforme du système Dublin sur tout le territoire communautaire.

Mais cette approche était critiquable car, en s'efforçant d'unifier l'application du dispositif Dublin et de gommer les différences entre les législations nationales, le projet d'article 4-3 sortait du champ d'application de l'article 63-1-a. En effet, seules les personnes qui demandent la reconnaissance du statut de réfugié sont visées par l'article 63-1-a TCE. Dès lors, une personne qui retire sa demande de statut de réfugié doit pouvoir échapper au champ d'application du règlement[26]. Or l'article 4-3 maintenait l'application des critères Dublin dans une hypothèse de retrait de la demande de statut de réfugié et de dépôt d'une demande de protection subsidiaire. L'hypothèse défendue ici est donc que le Conseil abandonne le projet d'article 4-3 pour mettre le contenu du règlement Dublin en conformité avec la norme le fondant juridiquement. Ce faisant, le Conseil admet aussi que dans certains Etats, la substitution d'une demande de protection complémentaire à une demande de statut de réfugié permettra d'échapper à l'application des critères Dublin. L'application du système Dublin sera donc susceptible de variations locales, mais cette solution est préférée à l'interprétation hasardeuse des termes du traité CE envisagée par la Commission.

En abandonnant les projets d'articles 4-3 et 20-2, le Conseil a donc purgé le règlement Dublin de tout risque d'illégalité et le règlement du 18 février 2003 est plus modéré que la proposition de la Commission. La prudence du Conseil se manifeste également dans le fait que l'équilibre de 1990 entre les critères déterminant l'Etat compétent pour examiner une demande d'asile est reconduit.

2. *Statu quo* sur les critères de responsabilité

Dès l'origine, le mécanisme Dublin a été pensé en relation avec l'objectif: de réalisation d'un espace sans frontières internes. Aussi, un lien conceptuel fut-il établi dans la Convention entre l'attribution de la responsabilité du traitement de la demande d'asile et le contrôle des migrations. Malgré les modifications apportées par le règlement, cette logique est préservée (1). Contrairement à la proposition de la Commission, le règlement n'arrime cependant pas le dispositif Dublin à la lutte contre l'immigration clandestine (2).

§ 1. *L'instrumentalisation du dispositif Dublin au service du contrôle des frontières*

Une lecture rapide du règlement Dublin peut faire croire à la refonte des critères de détermination de l'Etat compétent car la nouvelle liste des critères de désignation de l'Etat responsable de l'examen de la demande semble être un compromis entre les impératifs des contrôles frontaliers, l'intérêt des Etats, et celui des familles. En particulier, le règlement contient de nouvelles dispositions qui favorisent le regroupement familial et, situation nouvelle, les critères attribuant la responsabilité à l'Etat sur la base du regroupement familial s'appliquent avant les critères relatifs à la responsabilité de l'Etat pour l'entrée et le séjour du demandeur d'asile sur son territoire.

Une analyse plus précise révèle toutefois que Dublin 2 reste, comme son prédécesseur, un instrument au service des contrôles migratoires et n'est pas transformé en un instrument d'asile. Ainsi, la responsabilité est toujours attribuée à l'Etat qui, par un acte positif tel que la délivrance d'un visa ou d'un titre de séjour, a pris la plus grande part dans l'entrée et le séjour d'un ressortissant d'Etat tiers dans l'UE ou qui, par une défaillance, a permis l'entrée irrégulière. Au titre du nouvel article 9, sera déclare compétent l'Etat qui a délivré un titre de séjour ou un visa en cours de validité. Au titre de l'article 10, est responsable l'Etat dans lequel le demandeur d'asile est entré irrégulièrement en venant d'un Etat tiers ou, quand les circonstances de l'entrée ne peuvent être établies avec clarté, l'Etat dans lequel le demandeur d'asile a séjourné de manière continue au moins 5 mois

avant l'introduction de sa demande (10-2). Selon l'article 11, est responsable l'Etat d'entrée régulier ou de dépôt de la demande d'asile quand l'entrée sur le territoire européen n'est pas soumise à une condition de visa [27]. L'article 11 est justifié par le même lien entre responsabilité du traitement de la demande d'asile et responsabilité du contrôle migratoire car comme l'indique la Commission, lorsque le ressortissant de pays tiers est dispensé de visa, "on ne saurait considérer que l'Etat par lequel il est entré dans l'espace commun a été défaillant vis-à-vis de ses partenaires en autorisant l'entrée puisque tout autre Etat membre aurait autorisé l'entrée dans les mêmes conditions". Le principe de désignation de l'Etat responsable de la demande d'asile demeure donc fondé sur l'idée que, dans un espace de libre circulation, chaque Etat membre est "comptable vis-à-vis de tous les autres de son action en matière d'entrée et de séjour des ressortissants des Etats tiers"[28].

Malgré les modifications apportées par le règlement, Dublin 2 n'est donc pas devenu un instrument de politique d'asile. La référence à la Convention de Genève reste minimale. La possibilité de renvoyer un demandeur d'asile vers un Etat tiers sur n'est pas supprimée [29]. De plus, aucune garantie n'est prévue pour faire échec à un transfert vers un Etat désigné compétent si ce transfert est préjudiciable au demandeur d'asile. Le règlement traite donc avant tout du contrôle de la circulation des demandeurs d'asile dans une Europe aux frontières internes abolies.

Or l'utilisation d'un mécanisme de répartition de la compétence à des fins de contrôle migratoires a montré ses limites. Le lien entre responsabilité de l'examen de la demande et contrôle des entrées en Europe incite les Etats à refouler illégalement les demandeurs d'asile à leurs frontières terrestres et maritimes. Il conduit les Etats à exporter les mesures d'endiguement en envoyant des officiers d'immigration dans les pays de transit ou d'origine [30]. On connaît également la tendance à faire peser la responsabilité des contrôles sur les transporteurs par le biais des différentes législations prévoyant leur responsabilité[31]. Ces différentes mesures constituent des barrières qui empêchent les demandeurs d'asile d'accéder à la protection, et contredisent l'affirmation du Conseil européen de Tampere selon laquelle l'Union et les Etats membres accordent un respect absolu au droit de demander l'asile et s'engagent à offrir des garanties à tous ceux qui cherchent protection ou accès à l'Union européenne.

Peut-être le Conseil, cependant, n'etait-il pas insensible à ces arguments car il a renoncé aux dispositions sanctionnant les Etats pour une défaillance dans le traitement de l'immigration clandestine.

§ 2. *Le refus des critères relatifs à l'immigration clandestine*

La proposition de la Commission imposait aux Etats une stricte surveillance de l'immigration. Un projet d'article 12 prévoyait en particulier que «L'Etat membre qui a toléré sciemment la présence irrégulière du ressortissant d'un pays tiers sur son territoire pendant une période supérieure à deux mois est responsable de l'examen de la demande d'asile ». Un article 13-1 établissait que « S'il peut être démontré que le ressortissant d'un pays tiers a séjourné six mois ou plus en situation irrégulière sur le territoire d'un Etat membre, cet Etat est responsable de l'examen de la demande d'asile».

La justification de ces deux articles est intéressante. L'article 12 était motivé par l'idée que l'Etat qui a toléré la situation de séjour irrégulier a « par son inertie, favorisé les projets du ressortissant d'un pays tiers qui a pu attendre sur son territoire une occasion favorable pour se rendre irrégulièrement dans un autre Etat membre» afin d'y déclarer son intention de solliciter la reconnaissance de la qualité de réfugié. Pour la Commission, la menace d'un éloignement aurait au contraire conduit la personne concernée, si elle estime qu'un retour dans son pays d'origine l'exposerait à la persécution, à introduire une demande d'asile dont l'existence aurait permis de mettre en oeuvre la procédure de détermination de l'Etat responsable en vertu du présent règlement. On imagine aisément que ces propos ont pu être dictés par l'expérience franco-britannique du centre de Sangatte, même si celle-ci n'est pas mentionnée explicitement. L'article 13 pour sa part était

justifié par l'idée que l'Etat qui n'a pas détecté la présence irrégulière d'un ressortissant d'un Etat tiers a été défaillant dans la mise en oeuvre des objectifs de contrôle de l'immigration clandestine communs aux Etats membres et doit en assumer les conséquences vis-à-vis de ses partenaires.

Pour contraindre les Etats à lutter efficacement contre le séjour irrégulier, la Commission avait donc établi un lien de causalité entre le défaut de contrôle des séjours clandestins et la responsabilité de l'examen de la demande d'asile. Une telle approche est critiquable, tout d'abord, car elle instrumentalise le dispositif Dublin et en fait un outil de la politique de lutte contre l'immigration clandestine en Europe, ce qui n'est pas sa mission. Elle est ensuite préoccupante car elle repose sur l'idée de sanction des Etats défaillants. Dans l'exposé des motifs de l'article 11, il est en effet fait mention de l'idée qu'un Etat doit ou ne doit pas être «pénalisé». Ce vocabulaire contribue à propager l'idée que l'attribution de la responsabilité de l'examen d'une demande d'asile à un Etat est une sanction, une peine, qui découle d'une action erronée ou d'une omission. Cette terminologie doit inquiéter car elle s'éloigne très fortement de la conception selon laquelle la charge de l'examen d'une demande d'asile est la réponse apportée par un Etat, en vertu de ses obligations internationales, à une personne dont on a de fortes raisons de supposer qu'elle craint une persécution.

Le règlement ne retient pas la logique contestable de la Commission et abandonne les deux projets d'articles 12 et 13[32]. On se réjouira tout d'abord de la disparition des termes relatifs à la peine ou sanction: le règlement raisonne en terme de responsabilité, et non en terme de pénalité. Par ailleurs, le retrait des projets d'articles 12 et 13 est judicieux car les dispositions préconisées par la Commission, bien que destinées à assurer l'efficacité du mécanisme Dublin, risquaient d'être contre-productives. On pouvait en premier lieu s'interroger sur la viabilité du mécanisme. Sous le régime Dublin 1, le critère de responsabilité basé sur l'entrée irrégulière n'est en effet quasiment jamais appliqué en raison de difficultés de preuve qu'il rencontre: il est presque impossible de savoir par quel Etat un demandeur d'asile entre dans l'Union européenne. Comment alors démontrer qu'un Etat membre a toléré la présence irrégulière d'un demandeur d'asile pendant deux mois où qu'un demandeur d'asile à séjourné dans un Etat membre plus de 6 mois ? La Commission attendait probablement une importante contribution d'Eurodac sur ce point, mais il n'est pas certain qu'Eurodac suffise pour prouver un séjour irrégulier dans un Etat ou déterminer sa durée. De surcroît, la logique de sanction retenue n'incitait pas les Etats à révéler la présence de clandestins sur leur territoire. Justice [33] craignait aussi que les Etats n'aient la tentation de renvoyer les demandeurs d'asile vers d'autres Etats membres au plus vite, i.e. avant que les délais prévus aux articles 12 et 13 n'expirent. Le risque était donc important, si les Etats et les demandeurs d'asile avaient intérêt à la clandestinité, que les articles 12 et 13 soient ineffectifs.

En renonyant à ces articles, le règlement Dublin manifeste le réalisme du Conseil. Il refuse un mécanisme à l'efficacité compromise, qui risquait au surplus d'inciter les Etats à adopter des comportements contraires à l'intérêt collectif. On ne peut qu'adhérer à l'analyse d'Elspeth Guild qui décrivait le projet d'article 12 par les remarques suivantes : "il est difficile d'imaginer un système qui soit mieux conçu pour porter atteinte a l'intégration européenne. La confiance est une des caractéristiques les plus difficiles à établir dans le système européen. Pourtant elle est indispensable à l'intégration communautaire. Certains mécanismes qui renforcent la méfiance et diminuent la confiance entre les Etats sont contraires à l'intégration européenne. La proposition de règlement Dublin entre malheureusement dans cette catégorie" [34].

Enfin en retirant les projets d'articles 12 et 13, le Conseil évite le développement d'effets pervers. Puisqu'il suffisait d'un séjour irrégulier sur le territoire d'un Etat pour que cet Etat soit déclaré responsable de la demande d'asile, l'article 13 risquait d'être une «incitation» à la clandestinité. Un demandeur d'asile entré par un Etat périphérique de l'Union mais désireux de demander l'asile dans un autre Etat pouvait en effet développer la stratégie suivante: entrer clandestinement (pour échapper à l'application du critère entrée irrégulière; projet d'article 10), puis voyager

jusqu'a l'Etat de prédilection, y rester caché pendant 6 mois puis y demander l'asile. Après 6 mois de séjour irrégulier, le demandeur d'asile voyait désigner l'Etat de son choix compétent pour examiner sa demande [35].

En somme, alors que la proposition de règlement s'efforçait de contrôler certaines stratégies développées par les demandeurs d'asile, le règlement est une version beaucoup plus modeste mais purgée de toute illégalité. Le Conseil a choisi de ne pas innover et reste fidèle aux lignes directrices de 1990. Mais parce qu'il n'est justement pas réformé, le dispositif Dublin 2 reste un instrument inadapté aux réalités de l'asile dans l'Union européenne. Il se révèle sous les traits d'un dispositif temporaire, contraint par le processus d'harmonisation des droits d'asile et d'immigration qu'il précède.

II. Une reforme differée: un règlement encastré dans le processus d'harmonisation

Le préambule du règlement indique que « il convient, à ce stade [de la réalisation d'un régime d'asile européen commun], tout en y apportant les améliorations nécessaires à la lumière de l'expérience, de confirmer les principes sur lesquels se fonde la Convention (...) signée à Dublin ». Ce passage résume le choix du Conseil. Les critères permettant de designer l'Etat responsable de l'examen de la demande d'asile ne sont pas modifiés en substance et le Conseil confirme la posture défensive et dirigiste de 1990. Le résultat est un dispositif toujours inadapté aux réalités de l'asile en Europe dont l'efficacité est compromise. Ce choix, pourtant, est explicable. Le dispositif Dublin 2 a été conçu dans un contexte très spécifique: il a été modelé en fonction des autres normes communautaires, adoptées ou en préparation, qui mettent en place la politique commune d'immigration et d'asile. Ainsi la réforme du système Dublin, encastrée dans le processus d'harmonisation, est-elle très superficielle, ce qui nuira probablement à l'effectivité du dispositif. L'efficacité du système Dublin, qui était une priorité de la Commission, est déléguée par le Conseil qui met ses espoirs dans des mécanismes annexes de contrôle de l'immigration.

L'adoption du règlement Dublin précède l'harmonisation des droits nationaux sur l'asile et l'immigration. Cette position dans le temps n'est pas sans conséquences. On observe que le système Dublin 2 a été conçu en lien étroit avec les propositions de directives régissant l'immigration. Il est subordonné aux normes fondant le régime commun de l'immigration en Europe (1). De même, l'absence d'harmonisation des droits nationaux de l'asile sert à légitimer la non-réforme du système de 1990 (2).

1. Un régime subordonné au régime général sur l'immigration

Le règlement de février 2003 a toiletté les critères servant à désigner l'Etat responsable du traitement de la demande d'asile. L'apport le plus significatif est la protection accrue du regroupement familial des demandeurs d'asile. Le règlement ajoute ainsi au texte de 1990 un premier critère de compétence, visant à rapprocher un mineur non accompagné auprès d'un membre adulte de sa famille déjà présent dans un Etat membre et susceptible de le prendre en charge [36]. Il attribue ensuite, par son article 8, la responsabilité de l'examen de la demande d'asile à l'Etat membre qui examine la demande introduite par un membre de sa famille arrivé antérieurement et qui n'a pas encore fait l'objet d'une décision sur le fond, à condition que les intérêts le souhaitent [37]. Par ailleurs, pour éviter qu'une application littérale des critères de responsabilité ne conduise à séparer les membres d'un groupe familial qui ont introduit une demande dans le même Etat membre, l'article 14 prévoit les dérogations à l'application normale des critères afin de maintenir l'unité du groupe dans un seul Etat membre. Quand plusieurs membres d'une famille introduisent une demande d'asile dans un même Etat membre simultanément ou à des dates suffisamment proches et que l'application des critères du règlement conduirait à les séparer, est désigné

responsable soit l'Etat que les critères désignent comme responsable de la prise en charge du plus grand nombre d'entre eux, soit l'Etat que les critères désignent responsable du plus âgé d'entre eux. Enfin l'article 15, relatif à la clause humanitaire, prévoit désormais que tout Etat, même s'il n'est pas responsable en application des critères Dublin, peut rapprocher les membres d'une même famille ainsi que d'autres parents pour des raisons humanitaires fondées notamment sur des motifs familiaux. L'alinéa 3 dispose que si le demandeur d'asile est un mineur non accompagné et qu'un ou plusieurs membres de sa famille se trouvant dans un autre Etat membre peuvent s'occuper de lui, les Etats membres réunissent si possible le mineur et le membre ou les membres de sa famille.

Ces dispositions sont un progrès certain [38] mais la générosité du règlement Dublin à l'égard des familles ne doit pas faire illusion. En dépit des apparences, les nouvelles dispositions sur la famille sont une concession faite aux voix critiques de la Convention de 1990 mais elle ne changent pas la philosophie d'attribution de la responsabilité. Les articles consacrés au regroupement familial sont pour la plupart une codification des décisions du Comité de l'article **18**[39]. Et surtout, la protection des familles semble accessoire, comme le montre le préambule du règlement (point 6): «il y a lieu de préserver l'unité des familles **dans la mesure où ceci est compatible**[40] avec les autres objectifs poursuivis par l'établissement de critères et mécanismes de détermination de l'Etat responsable de l'examen d'une demande d'asile ». Dans sa proposition, la Commission considérait également que l'article 8 ne pourrait utilement s'appliquer que s'il ne portait pas préjudice à d'autres objectifs importants des instruments de la politique communautaire en matière d'asile, «notamment à l'objectif d'un traitement rapide des demandes, en particulier des demandes manifestement infondées»[41]. A aucun moment la garantie de l'unité familiale n'est donc conçue comme susceptible de fonder le nouveau système de désignation de l'Etat responsable. Le contrôle des flux migratoires reste l'axe central du mécanisme Dublin.

On note d'ailleurs que Dublin 2 est conçu en relation avec la norme communautaire sur le regroupement familial [42]. Le règlement Dublin en effet a été modelé en fonction des termes de la proposition de directive sur le regroupement familial des ressortissants d'Etats tiers [43]. Cette adaptation est manifeste, tout d'abord, dans la définition des membres de la famille (article 2, i). Selon le règlement, est membre de la famille le conjoint, ou son partenaire non marié, engagé dans une relation stable, lorsque la législation ou la pratique de l'Etat membre réserve aux couples non mariés un traitement comparable aux couples mariés en vertu de sa législation sur les étrangers. Sont également membres de la famille les enfants mineurs des couples mariés ou non mariés s'ils sont célibataires et sont à charge. Enfin, sont membres de la famille le père, la mère ou le tuteur lorsque le demandeur d'asile ou le réfugié est mineur et non marié. Cette définition de la famille correspond à celle retenue par la (proposition de) directive sur le regroupement familial.

De plus le règlement est plus restrictif que la proposition de règlement, qui n'imposait l'existence de constitution de la famille dans le pays d'origine que pour les couples non mariés. Il est aussi plus strict que la proposition de directive sur le regroupement familial: cette dernière prévoyait à son article 9 que les Etats membres **peuvent** limiter l'application des dispositions de ce chapitre aux réfugiés dont les liens familiaux sont antérieurs à la reconnaissance de ce statut alors que le règlement impose cette limitation. Il faut que soit d'abord démontré que la famille existait déjà dans le pays d'origine. La rigueur du règlement Dublin n'est pas fortuite. Elle illustre la crainte que de «faux réfugiés» se servent du mécanisme Dublin pour contourner le (futur) dispositif sur le regroupement familial[44]. Peut se comprendre de la même manière l'abandon de la disposition au titre de laquelle était membre de la famille la personne «avec laquelle existe un lien de parenté et qui vivait dans le même foyer dans le pays d'origine si l'une des personnes concernées est dépendante de l'autre» (art 2i de la proposition de règlement)[45]. Cette définition était souple et favorable au regroupement familial des réfugiés. Le règlement au contraire choisit une

définition stricte, conforme aux termes de la proposition de directive regroupement familial. Enfin, la peur du contournement des dispositions sur l'immigration explique la limitation du champ d'application de l'article 7 du règlement. Cet article dispose que si un membre de la famille du demandeur d'asile a été admis à résider en tant que réfugié dans un Etat membre, cet Etat est responsable de l'examen de la demande. Il ne prévoit donc la réunification qu'avec une personne bénéficiant du statut de réfugié[46], alors que le HCR [47] et diverses ONG recommandaient de garantir cette unité familiale avec un membre de la famille sous protection subsidiaire ou simplement légalement résident dans l'Etat membre. Une telle possibilité assurerait en effet une meilleure intégration du demandeur d'asile dans la société d'accueil, ainsi qu'une certaine stabilité, et diminuerait par ailleurs les risques de migrations secondaires. L'explication la plus plausible de ces différents choix normatifs semble donc être la crainte de voir des ressortissants d'Etats tiers ne répondant pas à la définition de membre de la famille (au sens de la proposition de directive) utiliser le regroupement familial des réfugiés pour accéder à l'UE.

Bien qu'il ait été adopté six mois avant la directive sur le regroupement familial des ressortissants d'Etats tiers[48], le règlement 343/2003 est donc modelé en fonction des objectifs des Etats en matière de réunification familiale. Le système Dublin n'ouvre pas de voie permettant de contourner les règles générales sur l'immigration. De même, les Etats subordonnent la réforme réelle des mécanismes Dublin à l'adoption des normes communautaires harmonisant les législations nationales sur l'asile. La réforme est donc différée: elle devra être postérieure à l'harmonisation.

§ 1. *Une réforme différée à la période post-harmonisation*

La Convention de 1990 désignait l'Etat responsable d'une demande d'asile sur la base de six critères, prédéfinis, contraignants et qui pour l'essentiel lient la responsabilité au rôle joué par l'Etat [49]. Souhaitant réformer ces critères, la Commission a considéré différentes solutions de remplacement [50]. Elle a envisagé en premier lieu un modèle qui attribuerait la responsabilité au dernier Etat de transit connu dans l'UE. Ce système réduirait les problèmes de preuve car s'il est généralement difficile de savoir par quel Etat un demandeur d'asile est entré dans l'UE, il est plus aisé d'identifier le dernier Etat de transit. Toutefois, le projet a été abandonné car il pénaliserait les Etats pour l'abolition de leurs frontières internes. La Commission a ensuite suggéré un système radical au titre duquel tous les demandeurs d'asile d'une même nationalité seraient affectés à un seul et même Etat membre. Cette approche présente l'avantage de tenir compte, pour le rattachement des demandeurs d'asile aux Etats, de l'existence de liens culturels ou historiques entre certains Etats membres et certaines nationalités. Mais elle repose sur une attribution relativement arbitraire des demandeurs d'asile à un Etat et serait, en cas de crise grave dans un pays et de mouvements de populations importants, en contradiction avec l'objectif de partage équitable des demandeurs d'asile entre les Etats membres.

La Commission à ensuite écarté chacune de ces possibilités et conclu que l'alternative la plus crédible au système de 1990 est celle qui ferait dépendre la responsabilité de l'examen de la demande d'asile exclusivement du lieu où la demande a été présentée. Seule cette logique permettrait de « mettre en place un système clair et viable répondant à un certain nombre d'objectifs: rapidité et certitude, éviter les réfugiés en orbite, traitement du problème des demandes d'asile multiples et garanties de l'unité familiale »[51]. Malgré les arguments favorables au changement, le Conseil a préféré le statu quo. Le Conseil n'a pas choisi de consacrer l'alternative au système de 1990, qui consistait à désigner responsable l'Etat dans lequel le demandeur d'asile a déposé sa demande. Le refus du changement est significatif de la posture choisie par les Etats : ils ont refusé de consacrer un système de laissez faire et préféré maintenir un mécanisme qui tente de contrôler les trajectoires des migrants d'asile et leur répartition entre les Etats de l'Union.

Ce choix est regrettable parce qu'il repose sur une vision contestable de l'asile. Les institutions communautaires assimilent le choix

d'un Etat de destination à une stratégie d'abus des procédures d'asile. Ainsi, la Commission indiquait la nécessité de lutter «contre le détournement et l'abus des procédures d'asile, en empêchant le demandeur d'asile de choisir l'Etat dans lequel il va demander l'asile» [52]. Ces propos révèlent la méfiance à l'égard de ce que l'on est désormais convenu d'appeler l'*asylum shopping*. Au sens strict et neutre, l'*asylum shopping* est le processus par lequel un demandeur d'asile compare plusieurs pays de possible destination et sélectionne sur la base de différents critères celui dans lequel il va finalement demander l'asile. Mais les institutions communautaires emploient ce terme dans un autre sens, décrivant le dépôt de demandes d'asile multiples simultanément dans le but de contourner les systèmes nationaux d'asile[53]. La Commission a ainsi progressivement établi une différence entre le fait de choisir un Etat de destination sur la base de critères familiaux, culture ou linguistique (stratégie considérée comme légitime), et la sélection d'un Etat en raison du droit applicable (sélection considérée illégitime) [54]. Cette distinction est inadéquate car elle ne prend pas en considération l'importance que peut revêtir, pour un demandeur d'asile, la différence d'interprétation de la Convention de Genève, l'accès possible à une protection subsidiaire, ou encore la définition d'un Etat sûr [55].

Une autre raison justifie le refus de laisser les demandeurs d'asile choisir leur Etat de destination. Pour la Commission[56], cette alternative nécessiterait une harmonisation dans d'autres domaines tels que la procédure d'asile, les conditions d'accueil, l'interprétation de la définition du terme «réfugié» et la protection subsidiaire pour réduire les facteurs qui inciteraient éventuellement les demandeurs d'asile à choisir entre les Etats membres au moment ou ils introduisent leur demande. En effet, au stade actuel de l'édification du régime d'asile européen commun, il existe entre les Etats membres, dans les procédures d'admission au statut de réfugié, les conditions d'accueil des demandeurs d'asile et l'organisation des formes complémentaires de protection, «des différences susceptibles d'avoir une influence sur l'orientation des flux de demandeurs d'asile.»[57]

La Commission craint donc que les Etats membres offrant le niveau de protection le plus élevé de l'UE soient le réceptacle de l'ensemble des demandeurs d'asile et elle propose de différer la reforme. Cette crainte - apparemment partagée par le Conseil – repose sur le postulat qu'un changement de méthode de détermination de l'Etat compétent, laissant aux demandeurs d'asile le choix de leur Etat de destination, équivaudrait à abandonner la sécurité offerte par un système contrôlé et dirigiste et à accepter les conséquences d'un système libéral, de distribution spontanée des réfugiés entre les Etats membres. Un tel raisonnement est contestable car il suppose, a contrario, qu'il est possible de contrôleur effectivement la répartition des demandeurs d'asile en Europe. Cela revient à nourrir la fiction selon laquelle les Etats ont la capacité d'empêcher un demandeur d'asile de se rendre dans son Etat de prédilection. L'expérience a pourtant montré que, en usant toutes voies légales possibles ou au prix de la clandestinité, les demandeurs d'asile parviennent à échapper à l'application des critères Dublin.

De surcroît, pour refuser le choix de l'Etat de destination, les institutions communautaires arguent de la situation actuelle – et temporaire – de non-harmonisation des droits nationaux. Selon la Commission, c'est la diversité des droits nationaux qui suscite les stratégies de comparaison entre les Etats et conduit à privilégier les Etats les plus protecteurs. C'est pourquoi elle propose de reporter la mise en place du système de libre choix à l'après harmonisation. Ce raisonnement n'emporte pas non plus la conviction car rien ne garantit que l'harmonisation des droits nationaux d'asile permettra d'équilibrer la répartition des demandeurs d'asile entre les Etats. En effet, pour choisir leur Etat d'accueil, les demandeurs d'asile prennent en compte une multiplicité de critères[58] et, s'ils comparent les droits garantis (protection contre le refoulement, sécurité sociale, possibilité de travailler etc.), ils prennent également en considération la présence de communautés nationales ou linguistiques, de réseaux d'entraide, la proximité culturelle avec l'Etat membre etc. Aussi, l'harmonisation n'aura aucune incidence sur le choix d'un Etat fondé sur des critères non juridiques. Par ailleurs,

dans la mesure où le traité ne prévoit que des directives d'harmonisation partielle, les droits nationaux sur l'asile, même dans les domaines couverts par l'harmonisation, ne seront pas unifiés. Par conséquent, l'harmonisation ne mettra pas fin aux tactiques d'asylum shopping fondées sur les écarts de niveaux de protection offerts par les différents Etats membres [59].

Reposant sur des postulats erronés, le règlement choisit donc des solutions dont on a toutes les raisons de penser qu'elles sont inadaptées aux réalités de l'asile dans l'Union européenne et compromettront probablement l'application effective du "nouveau" système Dublin. Il n'est guère besoin de pessimisme pour faire la chronique des dysfonctionnements prévisibles d'un système non réformé dans un système non harmonisé. Le système Dublin 2 se prive des atouts de la méthode envisagée par la Commission. Un système désignant responsable l'Etat dans lequel le demandeur d'asile a déposé sa demande d'asile limiterait en effet les stratégies de recours à la clandestinité dans la mesure où les individus n'auraient pas à contourner le dispositif Dublin pour pouvoir choisir leur Etat de destination. Cela contribuerait par effet ricochet à lutter contre les réseaux de passeurs clandestins qui exploitent les demandeurs d'asile. Par ailleurs, les demandeurs d'asile, ne cherchant plus à éviter un mécanisme qu'ils considèrent injuste, seraient moins incités à détruire leurs documents d'identité ou à mentir sur leur route européenne, ce qui réduirait les problèmes de preuves qui ont miné la bonne application du système Dublin. La stratégie de demande d'asile multiple devrait également logiquement disparaître, ce qui soulagerait les systèmes nationaux d'asile. Enfin, l'unité familiale pourrait être assurée plus spontanément.

Au contraire, le statu quo laisse ouvertes à peu près toutes les stratégies par lesquelles les demandeurs d'asile rejoignent leur Etat de prédilection [60]. Les projets d'articles 4-3 et 20-2 ayant été abandonnées, le nouveau règlement ne mettra pas un terme aux stratégies d'évitement du dispositif de désignation de l'Etat responsable : un demandeur d'asile voulant échapper à un transfert pourra toujours le retarder ou y échapper en retirant sa demande de statut de réfugié. En outre, les nombreux recours observés contre l'application du système Dublin I démontrent que lorsque les demandeurs d'asile ne recourent pas à des moyens hasardeux ou illégaux pour éviter les critères Dublin, ils tentent toutes les stratégies possibles de contestation par la voie légale. Le succès de certains recours (en particulier dans certains Etats) contre le transfert d'un Etat membre à un autre tient à ce que certaines juridictions sont réceptives aux arguments des demandeurs d'asile et remettent explicitement en question le niveau de protection conféré aux réfugiés dans d'autres Etats membres [61]. Le règlement Dublin ne donnant aucune raison à ces juges de renoncer à leur jurisprudence, on comprend qu'en attendant l'harmonisation, l'effectivité du dispositif Dublin 2 pourrait relever du vœu pieux.

Cette observation conduit donc à questionner l'ordre d'adoption des normes sur l'asile prévues par le traité CE et notamment la décision d'adopter le mécanisme Dublin lors de la première vague de normes réalisant la politique communautaire d'asile (normes devant être adoptées pour 2004). Il est permis de penser que l'adoption du mécanisme Dublin aurait dû avoir lieu à la fin du processus d'harmonisation des droits d'asile plutôt qu'au début. Un des membres de la Commission, M. Fortescue, fait d'ailleurs le pronostic suivant: «quand toutes les pièces seront mises en place, et lorsque nous aurons vraiment initié un véritable système d'asile commun, ce sera le moment de réexaminer Dublin 2 [62]». Peut-on mieux dire que Dublin 2 est conçu comme un système temporaire, destiné à être remanié assez rapidement et dont les nombreuses imperfections sont explicables par les contraintes tenant au moment de son adoption et à son antériorité par rapport aux autres normes prévues par le titre IV TCE? L'efficacité du système Dublin 2 semble donc reposer sur les quelques nouvelles dispositions qui tentent de rationaliser et de perfectionner la coopération entre les Etats. En réalité, l'absence de réforme substantielle trahit la volonté des Etats de confier l'efficacité du système Dublin au dispositif Eurodac.

2. L'efficacité déléguée

N'étant pas substantiellement réformé et se déployant dans un espace où les droits de l'asile ne sont pas harmonisés, Dublin 2 a toutes les chances de ne pas être effectif. Les espoirs de son bon fonctionnement reposent en effet uniquement sur quelques dispositions ajustant les mécanismes de 1990 et s'efforçant de faciliter la coopération inter étatique (1). Il semble que les Etats aient placé en EURODAC leur espoir de voir le système Dublin fonctionner (2).

§ 1. Quelques ajustements techniques pour une effectivité incertaine

Le toilettage du dispositif Dublin concerne tout d'abord les délais, une reforme ayant été souhaitée pour accélérer la détermination de l'Etat compétent et l'organisation du transfert[63]. Le texte de 1990 permettait en effet une très longue procédure puisque trois délais venaient s'ajouter. Un Etat membre disposait d'un premier délai de 6 mois (à compter du dépôt de la demande d'asile) pour demander à un autre Etat membre de prendre en charge un demandeur d'asile[64]. L'Etat requis disposait alors d'un délai de 3 mois pour répondre [65]. Si l'Etat requis acceptait la responsabilité, le transfert du demandeur d'asile était organisé et devait, selon l'article 11-5, intervenir au plus tard un mois après l'acceptation de la demande de prise en charge ou un mois après l'issue de la procédure contentieuse éventuellement engagée par l'étranger contre la décision de transfert si la procédure était suspensive [66]. L'ensemble de la procédure de détermination de l'Etat responsable, et le cas échéant du transfert, pouvait donc prendre 9 mois, ce qui était problématique à la fois pour les Etats et pour les demandeurs d'asile, placés dans une situation de grande incertitude [67]. Le délai de réponse à la demande de prise en charge fut également considéré trop long[68]. En revanche, le délai pour procéder au transfert fut considéré trop bref car le transfert est une procédure complexe dans laquelle interviennent plusieurs autorités et qui peut être entravée par divers événements, comme la maladie du demandeur d'asile ou sa disparition.

Le règlement tente d'améliorer le dispositif en modifiant les délais applicables à chaque phase de la procédure. Désormais les Etats ont 3 mois[69] (65 jours ouvrables selon la proposition) pour demander à un autre Etat de prendre en charge un demandeur d'asile. L'Etat membre requis doit statuer sur la requête aux fins de prise en charge dans un délai de deux mois (la proposition prévoyait un mois). L'absence de réponse dans ce délai équivaut à acceptation de la requête et entraîn obligation de prendre en charge la personne concernée (article 18)[70]. Cette disposition, bien sûr, est un mécanisme incitatif: les Etats doivent être prompts dans leur réponse afin d'assurer le bon fonctionnement du système de détermination de la responsabilité – transfert. Enfin, le transfert est réalisé dès que cela est matériellement possible et au plus tard dans un délai de six mois à compter de l'acceptation de la demande de prise en charge (article 19-3). Cependant, au titre de l'article 19-4 (article que la proposition n'avait pas envisagé), si le transfert n'est pas exécuté dans le délai de 6 mois, la responsabilité incombe à l'Etat membre auprès duquel la demande d'asile a été introduite. Ici encore, le règlement incite les Etats à la diligence. Toutefois, ce délai peut être porté à un an au maximum s'il n'a pas pu être procédé au transfert en raison d'un emprisonnement du demandeur d'asile ou à dix-huit mois au maximum si le demandeur d'asile prend la fuite. Ces nouveaux délais doivent être accueillis positivement car ils tiennent compte de la difficulté rencontrée par les Etats. Cependant on ne doit pas surestimer l'importance de la réforme car le délai total pour l'organisation du transfert reste de 11 mois dans l'hypothèse basse, alors qu'il était de 9 mois dans le dispositif d'origine.

Pour assurer l'efficacité du dispositif, le règlement procède également à quelques amendements qui vont «huiler» la coopération inter étatique. Il programme l'adoption de deux listes qui préciseront les éléments de preuve et les indices permettant d'établir la responsabilité[71]. Il contient aussi des dispositions organisant les échanges d'informations entre les Etats membres (article 21). Enfin le règlement prévoit que les Etats

membres peuvent établir entre eux, sur une base bilatérale, des arrangements administratifs pour accroître l'efficacité du dispositif Dublin. Ces arrangements prévus par l'article 23 peuvent, d'une part porter sur des échanges d'officiers de liaison, et d'autre part sur une simplification des procédures et un raccourcissement des délais applicables à la transmission et à l'examen des requêtes de prise en charge ou de reprise en charge.

§ 2. EURODAC ou les espoirs du Conseil

L'impression générale qui se dégage à la lecture des deux règlements est que ces quelques aménagements ne suffiront pas à assurer l'efficacité de Dublin 2. Il semble même que le Conseil en était conscient et a implicitement confié le soin d'assurer l'efficacité de Dublin 2 au système Eurodac, la base de données d'empreintes digitales des demandeurs d'asile mise sur pied en 2000[72]. Le préambule du règlement 343/2003 indique ainsi que (point 11) "l'exploitation du système Eurodac rendra plus aisée la mise en œuvre du présent règlement."

Eurodac fut en effet conçu pour aider les Etats à identifier le pays responsable de l'examen d'une demande d'asile et depuis le 15 janvier 2003, tous les demandeurs d'asile voient leurs empreintes digitales relevées lorsqu'ils présentent une demande d'asile dans le cadre de la procédure normale de demande d'asile. Les empreintes sont ensuite envoyées au point national d'accès de chacun des Etats participants et transmises sous forme numérique à une unité centrale à Bruxelles. Elles sont alors automatiquement comparées aux empreintes de toutes les personnes qui, depuis le 15 janvier 2003, ont introduit une demande d'asile dans l'UE ainsi qu'avec les empreintes des personnes qui ont été appréhendées alors qu'elles tentaient d'entrer illégalement dans l'Union européenne mais à qui l'entrée n'a pas pu être refusée. Si les empreintes digitales figurent dans Eurodac, l'information est communiquée au pays ayant transmis les empreintes. Celui-ci pourra alors envoyer le demandeur dans le pays où il a présenté sa première demande ou par lequel il est entré dans l'Union européenne afin que ce deuxième pays décide de la suite à donner à la demande.

Eurodac est donc appellé à jouer un rôle dans le fonctionnement du système Dublin, notamment dans le système de preuve et transmission des informations entre les Etats. Ainsi par exemple, au titre du règlement de septembre 2003, lorsqu'une requête de reprise en charge est fondée sur des données fournies par l'unité centrale d'Eurodac (et vérifiées par l'Etat (requérant), l'Etat membre requis reconnaît sa responsabilité. La cessation de la responsabilité ne peut être invoquée que sur la base d'éléments de preuve matériels ou de déclarations circonstanciées et vérifiables du demandeur d'asile.

Ayant renoncé à réformer substantiellement le système Dublin, les Etats semblent donc s'en remettre à Eurodac pour déceler les dépôts multiples de demandes d'asile et supprimer certaines difficultés de preuve, notamment quant au lieu d'entrée en Europe. Cette large confiance placée dans le système Eurodac est un pari et un symbole. Elle illustre la tendance «défensive» du système Dublin qui repose sur l'illusion du contrôle et associe la responsabilité de l'examen des demandes d'asile au contrôle des frontières. On ne saurait en effet omettre que, si le système Eurodac peut aider à déterminer quel Etat est responsable de l'examen de la demande d'asile, il fut avant tout conçu pour déterminer qui est entré illégalement dans l'Union européenne.

Conclusion:

Le système Dublin mis en place en 1990 a mal fonctionné. Dans ses travaux préparatoires, la Commission proposait une réforme radicale du système qui rénovait l'esprit du système Dublin et pouvait en assurer l'efficacité. Le conseil au contraire a choisi le statu quo, l'attente et la réforme annoncée n'a pas eu lieu. La logique d'attribution de la responsabilité est reconduite et la caractéristique du règlement du 18 février 2003 semble être une certaine myopie à l'égard des migrations d'asile. Les institutions communautaires oscillent entre une approche méfiante des stratégies de déplacement et de

choix de l'Etat de destination, l'utopie d'un possible contrôle de ces déplacements et de ces choix, et l'illusion que Dublin 2 pourrait être efficace. L'impression qui domine à la lecture des règlements de février et septembre 2003 est que la reforme de la Convention de Dublin a été manquée. Il reste à déterminer si c'est la situation de dépendance à l'égard du processus d'harmonisation qui explique ce demi-échec, auquel cas il conviendra d'attendre la réforme du système Dublin 2. Ou peut-être faut-il plus généralement se demander si la conception même d'un instrument qui affecte *ex ante* et strictement un Etat à un individu est une approche adéquate des réalités migratoires de l'asile en Europe.

NOTES :

[1] JO, L 50/1, du 25.2.2003

[2] Règlement 1560/2003 de la Commission du 2 septembre 2003 portant modalités d'application du règlement 343/2003 du Conseil établissant les critères et mécanismes de détermination de l'Etat responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers, J.O. LI22, 5.9.2003, p. 3-23.

[3] JOCE C 254, 19.08.1997

[4] Le premier critère est celui du regroupement familial: est désigné compétent l'Etat dans lequel certains membres de la famille du demandeur d'asile ont obtenu le statut de réfugie. Par application du deuxième critère, est désigne compétent l'Etat qui a délivré un permis de séjour en cours de validité. Le troisième critère désigne l'Etat ayant délivré un visa en cours de validité. Par application du quatrième critère, est compétent l'Etat par laquelle demandeur d'asile est entré illégalement en Europe. Le cinquième critère vise l'entrée légale sur le territoire national. Enfin, au cas où aucun des critères précédents n'est applicable, sera désigne responsable l'Etat dans laquelle demandeur d'asile aura déposée sa première demande d'asile.

[5] La Convention de Dublin organise la procédure de prise en charge d'un demandeur d'asile (hypothèse où le demandeur d'asile est installe dans un Etat membre qui ne se considère pas compétent et demande à un autre Etat partie de prendre en charge le demandeur d'asile) et de la reprise en charge (hypothèse où le demandeur d'asile a déposé une demande d'asile dans un Etat compétent et a ensuite voyage vers un autre Etat membre.)

[6] La Convention est entrée en vigueur le leur septembre 1997. Elle liait alors douze Etats membres. Elle est entrée en vigueur en Suède et en Autriche en octobre 1997 et en Finlande en 1998.

[7] Voir Liebaut, F., *The Dublin Convention, Study on its implementation in the 15 Member States of the EU, www.flyghtning.dk/publikationer.* Voir aussi les contributions de Karsten Kloth et Gloria Bodelon Alonson in Claudia Faria (ed.) *The Dublin Convention on Asylum. Between Reality and Aspirations*, Institut Europeen d'Administration Publique, 2001.

[8] Si par exemple l'Etat de prédilection des demandeurs d'asile se trouve a la fin de leur route en Europe, ils tentent par tous moyens, y compris clandestinement, d'arriver a destination. S'ils réussissent à accéder a l'Etat voulu, ils détruisent parfois leurs documents de voyage et font une fausse description de la route empruntée pour éviter d'être rattaches a l'Etat de transit. Si l'Etat finalement désigne compétent n'est pas celui oil ils veulent demander l'asile, il tentent d'échapper il la procédure de transfert.

[9] Voir le bilan présente dans le document de travail "*Evaluation de la Convention de Dublin*", SEC(2001)756 final du 13.06.2001. Voir aussi les chiffres commentes par le Comite économique et social qui relève que le mécanisme laborieux mis en place n'est applique que pour une très faible proportion des demandes d'asile et moins de 1,7 % des demandeurs d'asile sont finalement transfères vers un autre Etat que celui dans lequel ils ont déposé leur demande, in Opinion du Comite économique et social sur la proposition de règlement du Conseil établissant les critères et mécanismes de détermination de l'Etat membre responsable d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'Etat tiers du 20 mars 2002, CES 352/2002.

[10] Voir Friedrich Loper, *The Dublin Convention Provisions on Time Limits and the Exchange of Information: Which Are the Provisions and What Are the Problems*?, in Claudia Faria (ed.) *The Dublin Convention on Asylum. Between Reality and Aspirations*, Institut Europeen d'Administration Publique, 2001, pp. 27-35

[11] Idem et voir "*Réexamen de la Convention de Dublin: élaboration d'une législation communautaire permettant de déterminer quel Etat membre est responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres*", SEC(2000)522 final du 21.03.2000.

[12] A juste titre le parlement britannique considère que l'échec de la Convention de Dublin tient a ce que les Etats ont présume, a tort, que les demandeurs d'asile et les Etats de première admission pourraient s'accommoder de procédures qui fonctionnent a leur détriment, in *Nineteenth Report of the UK Parliament, 19 March 2002,* by the Select Commitee appointed to consider Union documents and other matters relating to the European Union, *www.parliament-the-stationery-office.co. Uk* Convention de Genève, i.e. un statut dit subsidiaire ou complémentaire. Dans ce demier cas la Convention de Dublin n'est pas applicable mais la protection accorde est amoindrie en

comparaison de celle prévue au titre de la qualité de réfugié conventionnel.

[13] On a parfois eu recours 11 l'expression "protection loterie" car les demandeurs d'asile, selon l'Etat membre auquel ils seront rattaches, pourront espérer des niveaux de protection très disparates, y compris contre le refoulement.

[14] On ne peut pas négliger cependant les difficultés d'application qui devraient découler de la non application du règlement Dublin au Danemark, (celui-ci conformément au protocole sur la position du Danemark annexe au traite sur l'Union européenne et au traite instituant la Communauté européenne, ne participant pas 11 l'adoption du règlement et n'étant pas lie par lui.)

[15] La discussion a été initiée par un document de travail des services de la Commission "Réexamen de la Convention de Dublin: élaboration d'une législation communautaire permettant de déterminer quel Etat membre est responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres", SEC(2000)522 final du 21.03.2000. Puis la Commission a élabore une "*Evaluation de la Convention de Dublin*", SEC (2001)756 final du 13.06.2001. .

[16] Proposition de règlement du Conseil établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers, COM(2001)0447 final, JO, C 304 du 30.10.2001, p. 192.

[17] La mention dans ce texte de la Convention de Genève doit évidemment être comprise comme une référence à la Convention du 28 juillet 1951 relative au statut des réfugiés, modifiée par le protocole de New York du 31 janvier 1967.

[18] Proposition de règlement du Conseil établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers, COM(2001)0447 final, *JO,* C 304 du .10.2001, p. 192, commentaire de l'article 20-2 .

[19] Proposition de règlement du Conseil établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers, COM(2001)0447 final, *JO,* C 304 du 30.10.2001, p. 192, commentaire de l'article 4-3.

[20] Un autre projet d'article reposait sur la fiction de l'équivalence des protections nationales: c'est le projet d'article 24-lc. Il permettait aux Etats membres d'établir entre eux des arrangements administratifs et notamment d'instaurer «un mécanisme de rationalisation des transferts permettant (. . .) de procéder au transfert des seuls cas dont un Etat membre demeure débiteur vis-à-vis de l'autre Etat membre une fois qu'il a été renonce aux prises en charge qui s'annulent mutuellement ». La Commission voulait ainsi régir les hypothèses où les Etats connaissent un volume important de prises et reprises en charge qui s'effectuent dans les deux sens, aboutissant a. ce qu'elle appelle «une sorte de chasse croise de demandeurs d'asile faisant l'objet de transferts consentis ou sous escorte

[21] Gregor Noll, *Denying difference: The Dublin Successor Regulation,* in Asylum in Europe: Strategies, Problems and Solutions, Report from the Nordic Refugee Seminar, Lund, 28-29 August 2001, in edition du Raoul Wallenberg Institute, Lund, 2002.

[22] La Cour européenne des droits de l'homme a rappellé dans l'affaire TI contre Royaume Uni (7 mars 2000) que les Etats ne sauraient échapper a. leur responsabilité individuelle à l'aide d'une notion de responsabilité collective, que ce soit au titre de la Convention de Dublin ou de toute autre Convention. Un transfert qui risque de conduire, même indirectement, à un traitement inhumain ou dégradant, entralnera responsabilité de l'Etat.

[23] Voir en particulier Hemmes Mattjes, *A balance between Fairness and Efficiency? The Directive on International Protection and The Dublin Regulation,* European Journal of Migration and Law, 4-2002, pp. 159-192 et Gregor Noll, in *Asylum in Europe: Strategies, Problems and Solutions, Report from the Nordic Refugee* Seminar, Lund, 28-29 August 2001, in edition du Raoul Wallenberg Institute, Lund 2002.

[24] Gregor Noll, in *Asylum in Europe: Strategies, Problems and Solutions,* Report trom the Nordic Refugee Seminar, Lund, 28-29 August 2001, edition du Raoul Wallenberg Institute, Lund 2002. p. 11

[25] Proposition modifiée de directive du Conseil relative à des normes minimals concernant la procedure d'octroi et de retrait du statut de réfugié dans les Etats membres, COM/2002/0326 final.

[26] Voir sur ce point la position de ILP A's Scoreboard on the proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member State by a third country national, précitée, p. 4.

[27] Lorsqu'un ressortissant d'un pays tiers entre sur le territoire d'un Etat membre dans lequel il est exempt de l'obligation de visa, l'examen de sa demande d'asile incube à cet Etat membre. Mais si ce ressortissant d'Etat tiers introduit sa demande dans un autre Etat membre dans lequel il est exempt de l'obligation de visa, c'est ce dernier Etat qui est responsable de la demande d'asile.

[28] Proposition de règlement, commentaire de l'article 9.

[29] L'article 3-3 dispose que "tout Etat membre conserve la possibilité, en application de son droit national, d'envoyer un demandeur d'asile vers un Etat tiers, dans le respect des dispositions de la Convention de Genève"

[30] Voir Danielle Joly, *A New Asylum regime in Europe,* in F. Nicholson, P. Twomey (sous dir.) *Refugee, Rights and Realities. Evolving International Concepts and Regimes,* Cambridge University Press, 1999, pp. 336-356. Voir également Karen Landgren, *Deflecting International Protection by Treaty: Bilateral and Multilateral Accords on Extradition, readmission and the Inadmisibility of Asylum Request,* UNHCR's New Issues in Refugee Research, 1999, Working Paper N°lO, www.unhcr.ch

[31] Antonio Cruz, *Shifting responsibility, carrier's liability in the membre states of the European Union and North America,* Trentham Book, 1995.

[32] Il supprime également l'article 17-3 qui reposait sur la même logique en prévoyant que s'il peut être démontré que le demandeur d'asile a séjourne au moins 6 mois dans un Etat membre, les obligations imposables à l'Etat chargé de prendre ou reprendre en charge le demandeur d'asile sont transférées à cet Etat membre.

[33] JUSTICE, cité in Nineteenth Report of the UK Parliament, 19 March 2002, by the Select Commitee appointed to consider Union documents and other matters relating to the European Union, *www.parliament-the-stationery-office.co.uk*

[34] Elspeth Guild, citée in Nineteenth Report of the UK Parliament, 19 March 2002, by the Select Commitee appointed to consider Union documents and other matters relating to the European Union, *www.parliament-the-stationery-office.co.uk*

[35] Il n'est pas impossible que l'abandon du projet d'article 18-4 soit explicable par la même volonté de restreindre les stratégies des demandeurs d'asile.

[36] Article 6-1 : «si le demandeur d'asile est un mineur non accompagne, l'Etat membre responsable de l'examen de la demande est celui dans lequel un membre de sa famille se trouve légalement pour autant que ce soit dans l'intérêt du mineur».

[37] Ce critère repose sur l'idée que le traitement des demandes d'asile des différentiels membres d'une famille par un seul et même Etat est une mesure de nature it. permettre un examen approfondi des demandes et la cohérence des décisions prises it. leur égard. Il faut noter que le Conseil, contrairement it. la Commission, n'a pas exclu du bénéfice de cette disposition les demandeurs d'asile se trouvant hors du cadre d'une procédure normale (procédure acceleree par exemple).

[38] La Convention de Dublin ne prenait en compte la situation des familles que très partiellement. Elle garantissait seulement que (article 4) «si le demandeur d'asile a un membre de sa famille qui s'est vu reconnaître la qualité de réfugié au sens de la Convention de Genève dans un Etat membre et qui y réside légalement, cet Etat est responsable de l'examen de la demande, a la condition que les intéresses le souhaitent.

[39] Ainsi par exemple, l'article 6-1 correspond à l'un des cas visés dans la décision 1/2000 du comité de l'article 18. De même, l'article 8 vise à régler par un critère autonome et contraignant certains des cas visent par la décision 1/2000. Enfin, les critères choisis par l'article 14 permettent de donner force obligatoire a certain des cas de figure envisagés dans la décision 1/2000 sous forme de « lignes directrices» sujettes a une appréciation au cas par cas.

[40] C'est nous qui soulignons.

[41] Proposition de règlement, commentaire de l'article 8.

[42] COM (1999)638 final – 1999/0258. Ainsi la Commission considérait dans son document «*Réexamen de la Convention de Dublin*», §46 que la Communauté mettant actuellement en place les règles générales sur le regroupement familial, il est important d'assurer que l'acte déterminant la responsabilité pour l'examen de la demande d'asile soit en cohérence avec la future législation communautaire sur le regroupement familial.

[43] Devenue Directive 2003/86 du Conseil du 22 septembre 2003 relative au regroupement familial, J.O. L251, 3.10.2003, p. 12-18.

[44] La Commission dans sa proposition s'est en effet inquiétée du fait que « ces dispositions (sur l'unité familiale) puissent être detoumees de leur finalité pour contourner les règles relatives au regroupement familial proposées par la Commission dans sa proposition de directive du Conseil relative au regroupement familial. »

[45] *Le* HCR *soutenait cette proposition, conforme à l'approche défendue par le Comite Exécutif dans ses conclusions N°88 (XLX) de 1999.*

[46] Voir les commentaires de *ECRE,* précités, p. 8; *Amnesty International,* précité, p. 5; analyses de la comite économique et sociale, précitée.

[47] Voir *HCR Observations on the European Commission's proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national,* p. 3.

[48] Directive *2003/86* du Conseil du 22 septembre *2003* relative au regroupement familial, J.O. L251, 3.10.2003, p. 12-18.

[49] Ainsi, l'Etat est désigne compétent parce qu'il a dans le passe décide d'octroyer le statut de réfugié à un membre de la famille du demandeur d'asile (critère 1), ou parce qu'il a délivré un permis de séjour (critère 2) ou un visa (critère 3), ou parce qu'il n'a pas empêché l'entrée illégale (critère 4) ou parce qu'il a autorisé l'entrée (critère 5).

[50] Voir *Réexamen de la Convention de Dublin,* précité.

[51] Proposition de règlement du Conseil établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers, précitée, expose des motifs.

[52] *Réexamen de la Convention de Dublin,* précité, §40.

[53] Comme l'atteste par exemple l'argumentaire sur les réseaux de passeurs qui, selon la Commission, inciteraient les migrants économiques à se rendre dans certains Etats membres et à y demander l'asile pour éviter l'expulsion. In *Réexamen de la Convention de Dublin,* précité, §42.

[54] Voir exposé des motifs des différentes propositions de directive d'harmonisation.

[55] En fait, Commission et Conseil consacrent l'idée selon laquelle les demandeurs d'asile doivent demander l'asile dans le premier Etat qu'ils réussissent à atteindre.

[56] Réexamen de la Convention de Dublin, précité § 59.

[57] Proposition de règlement du Conseil établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers précitée.

[58] Pour une étude détaillée de ce que l'on a appellé les "push and pull factors" (i.e. les facteurs incitant les demandeurs d'asile à quitter leur pays ou à choisir certaines destination en particulier), voir A. Boeker et T. Havinga, *Asylum migration to the European Union: patterns of origin and destination*, Institute for the Sociology of law, Nijmegen, étude publiée par l'Office des Publications des Communautés Européennes, 1998.

[59] La Commission reconnaît d'ailleurs que les différences susceptibles d'avoir une incidence sur les orientations des demandeurs d'asile subsisteront, bien que sous une forme atténue, après que les directives proposées par la Commission sur ces matières seront entrées en vigueur, in Proposition de règlement du Conseil, précitée.

[60] Il n'est pas impossible que le règlement ouvre même la voie à de nouvelles « stratégies» qui mettront à mal l'efficacité du dispositif Dublin 2. Le nouvel article 10-1 attribue la responsabilité à l'Etat par lequel le demandeur d'asile est entré irrégulièrement dans l'UE. Mais cette responsabilité prend fin douze mois après la date du franchissement irrégulier de la frontière.

[61] On connaît en effet la jurisprudence spectaculaire de la Chambre des Lords en décembre 2000. Voir Elspeth Guild, *Case-Law on the Dublin Convention in the United Kingdom*, in Claudia Faria (ed.) *The Dublin Convention on Asylum, between Reality and Aspirations*, Institut Européen d'Administration Publique, 2001.

[62] « I do not at all rule out that when all the building blocks are in place and when we move towards something which is a genuine common asylum system, there could well be a case for revisiting Dublin II » cite in Nineteenth Report of the UK Parliament, 19 March 2002, by the Select Commitee appointed to consider Union documents and other matters relating to the European Union, *www.parliament-the-stationery-office.co.uk* point 35

[63] Voir Friedrich Loper, *The Dublin Convention Provisions on Time Limits and the Exchange of Informations: Which Are the Provisions and What are the Problems*, in Claudia Faria (ed) *The Dublin Convention on Asylum, Between Reality and Aspirations*, Institut Européen d'Administration Publique, 2001, p. 7

[64] Article 11-1.

[65] Article 11-4

[66] La Convention de Dublin réglait aussi les hypothèses de reprise en charge des demandeurs d'asile. Selon la Convention, l'Etat requis pour une reprise en charge est tenu de répondre à la demande dans un délai de huit jours à compter de la saisine.

[67] De plus, le délai de demande de prise en charge est critiquable car a contredit le principe énonce dans le préambule de la Convention de Dublin selon laquelle demande d'asile devrait être examinée promptement. Il est également en conflit avec le délai préconisé par la proposition de directive sur les normes minimales en matière de procédure. L'article 18 de cette proposition dispose qu'un Etat peut déclarer inadmissible une demande d'asile, si un autre Etat membre est responsable de l'examen de la demande. L'article 23 accorde 65 jours ouvrables pour la prise de décision.

[68] Les Etats s'étaient d'ailleurs, dans la décision 1/97 (article 4) engagés à mettre tout en œuvre pour répondre dans un délai d'un mois.

[69] Article 17 du règlement.

[70] Cette disposition n'est pas à l'abri de toute critique car il se peut que ce soit le demandeur d'asile, et non l'Etat qui soit « pénalisé » par cette absence de réponse.

[71] Article 18. Les éléments de preuve permettent d'établir la preuve de la responsabilité aussi longtemps qu'elle n'est pas réfutée par une preuve contraire. Les indices sont des éléments indicatifs qui, tout en étant réfutables, peuvent être suffisants dans certains cas, en fonction de la preuve probante. C'est le comité de l'article 27, constitué de représentants d'Etats membres, qui établira ces listes de preuve et indices.

[72] Règlement du Conseil CE 2725/2000 du 11 décembre 2000 concernant la création du système Eurodac pour la comparaison des empreintes digitales aux fins de l'application efficace de la Convention de Dublin, JOCE L 316 du 15.12.2000, p. 1.

Война в Ираке, экономический рост России и тиканье „нефтяных часиков“

Laurenţiu Constantiniu

Уже почти пять лет цены на нефть основных сортов (включая Brent) устойчиво держатся на уровне выше 25-долларовой отметки (а в последние месяцы и вовсе бьют рекорды десятилетий), подталкивая аналитиков к серьезным разговорам о том, что мир надолго вступил в эпоху дорогой нефти. Даже такой общепризнанный экономический гуру, как глава Федеральной резервной системы (ФРС) США Алан Гринспен (Alan Greenspan), недавно заявил: мировые цены на нефть стали высокими всерьез и надолго.

Уровень цен на главный мировой энергетический ресурс — это фактор перераспределения экономического и политического влияния в мире.

Во-первых, будучи инструментом глобального влияния, цены на нефть оказываются серьезным рычагом в руках стран-экспортеров — в первую очередь государств Ближнего Востока, среди которых лидирующее положение занимают Саудовская Аравия и Иран.

Во-вторых, возникают предпосылки для новых витков международного противостояния, связанного с борьбой развитых стран-импортеров за контроль над энергоресурсами (самым ярким примером является война в Ираке).

В-третьих (и это, безусловно, касается России, т.к. это важно для неё), высокие цены на нефть способны придать дополнительный импульс экономическому росту в странах с переходной экономикой, которые, несмотря на риск довести дело до „голландской болезни“ *(застой в обрабатывающих секторах экономики и отток капитала в ресурсодобывающий сектор и сектор услуг в результате поступления в страну больших объемов валюты от сырьевого экспорта. — пр. авт.)*, получают шанс естественным путем приблизиться к „клубу сильных“. Наконец, экономики ведущих держав, подавляющее большинство которых импортируют нефть, несколько ослабли, и в этом контексте высокие цены на нефть также ведут к изменению баланса сил в мировой экономике.

Итак, высокие цены на нефть — это шанс на рывок вперед для одних и риск стагнации для других. Насколько же сегодняшние сверхвысокие цены объективны и сколь долго они могут продержаться на таком же уровне? Существуют ли факторы, способные обвалить цены в обозримой перспективе? Что могло бы вызвать подобный обвал цен и чем он грозит России?

Как формируются цены на нефть

При всем уважении к господину Гринспену можно утверждать: не существует никаких оснований для вывода о том, что на неопределенно долгое время наступил период высоких мировых цен на нефть. При анализе структуры глобального нефтяного рынка, как правило, оперируют стандартными параметрами реальных товарных потоков: изменениями в спросе, динамикой добычи нефти основными странами-производителями, объемами стратегических и коммерческих запасов в странах-импортерах.

Однако глубоко ошибается тот, кто считает, что цены на нефть определяются сегодня так же, как на классическом товарном рынке, — соотношением реального спроса и предложения. Это давно уже не так. Достаточно проанализировать данные о структуре спроса и предложения на мировом рынке нефти в 1999-2003 годах, и станет ясно: реальных проблем с перебоями в поставках нефти на мировом рынке нет и не предвидится. Годовой дефицит нефти в самые „проблемные" годы (1994-2003) не превышал 2,6 млн баррелей в день, или 0,1 % от объема коммерческих запасов нефти в странах Организации экономического сотрудничества и развития (ОЭСР/EOCD). То есть текущий дефицит мог быть без труда покрыт резервами.[1]

Начиная с конца 1980-х мировые цены формируются на трех площадках по биржевой торговле нефтью и нефтепродуктами — Нью-Йоркской (New York Mercantile Exchange — NYMEX) и Сингапурской (Singapore Mercantile Exchange — SIMEX) товарных биржах и Лондонской нефтяной бирже (International Petroleum Exchange — IPE). Оборот реальных объемов физической нефти на этих площадках, работающих в 24-часовом режиме, составляет менее 1 % от общего объема международной торговли нефтью. Но здесь продают в основном не реальный товар (всего 1-2 % от совершаемых сделок), а производный — фьючерсные контракты на поставку нефти. Таким образом, цены на нефть фактически определяются не в ходе купли-продажи реального товара, а в процессе торговли финансовыми инструментами. Конечно, риски реального рынка тоже учитываются, но все же уровень цен в первую очередь подвержен влиянию слухов и сиюминутных тенденций изменения глобальной экономической и политической конъюнктуры.

Неудивительно, что в этой ситуации нефтяное ценообразование определяется не реальной обеспеченностью мирового рынка сырьем, а правилами спекулятивной игры, которые диктуются финансовыми инвесторами. Среди экспертов по нефтяному рынку распространено мнение, что в условиях длительного периода низких процентных ставок в финансовых системах стран Запада, в первую очередь в ФРС США, финансовые деривативы *(финансовые производственные инструменты: фьючерсные контракты, опционы и др. — пр. авт.)*, торгуемые на мировых нефтяных биржах, стали удобным средством помещения капитала. Недавно министр энергетики Алжира Шакиб Келиль (Shakib Kelili) заявил, что цены на нефть смогут существенно снизиться, если ФРС повысит учетную ставку. В этом случае спекуляции на нефтяном рынке могут стать для инвесторов менее привлекательными, чем операции на традиционных финансовых рынках. Ряд экономистов полагают, что на мировых нефтяных биржах надувается спекулятивный „пузырь", подобный тому, что имел место на американском фондовом рынке в конце 1990-х.

Чтобы увеличить цены, спекулянты с высокой эффективностью использовали любые сколько-нибудь существенные для мирового рынка тенденции и даже слухи. В дело пошло все: иракский фактор (хотя на самом деле уход иракской нефти с мирового рынка в 2003 году означал потерю только 686 тыс. баррелей в день и был весьма быстро восполнен); очередной отказ Организации стран экспортеров нефти (ОПЕК/OPEC) от повышения квот нефтедобычи (притом что картель редко когда соблюдал договоренности о квотах); забастовки в Нигерии и политическая нестабильность в Венесуэле. Вместе с тем никаких эмоций у рынка не вызвали такие, казалось бы, фундаментальные факторы, как взрывной — почти на 2,5 млн баррелей в день — рост нефтедобычи и экспорта в России за 5 лет, который с лихвой (более чем на 120 %) перекрыл в 2003-м прекращение поставок нефти из Ирака. Также был обойден вниманием ажиотажный рост производства в ближневосточных странах ОПЕК — Иране, Катаре, Кувейте, Объединённые Арабский Эмираты и Саудовской Аравии, где

совокупное производство нефти по сравнению с уровнем предыдущего года выросло в 2003 году более чем на 2,4 млн баррелей в день, или на 14 %.

Конечно, есть и объективные факторы, подстегивающие рост цен, например продолжающееся увеличение спроса на нефть в странах Азиатско-Тихоокеанского региона, в первую очередь в Китае. Истощаются базовые нефтяные месторождения, прежде всего ближневосточные, а разработка некоторых месторождений основных нефтедобывающих стран ОЭСР — США, Великобритании, Норвегии — прекращается. Цены на нефть поднимаются также в связи с удорожанием нефтедобычи в новых нефтеносных районах (на морском шельфе) и использованием современных технологий добычи. Тем не менее в условиях чрезмерной зависимости мирового рынка нефти от неведомой спекулятивной игры и отсутствия реального дефицита самого ресурса риск скорого и серьезного падения мировых цен велик. И если произойдет отток капитала с мировых биржевых площадок по торговле нефтью, не помогут ни урезание квот нефтедобычи со стороны ОПЕК, ни продолжающийся рост азиатского спроса на нефть. Все это мы уже проходили: в 1998-м кризис мировых цен был спровоцирован не столько избытком реального товара (который составил всего 400 тыс. баррелей в день), сколько кризисом мировых финансовых рынков, кризисом ожиданий, а в итоге и кризисом цен на рынке фьючерсных поставок нефти.

В этом случае цены на нефть могут не столько упасть до отметок, критических с точки зрения доходности бизнеса производителей товара, сколько оказаться — и надолго закрепиться — на уровне его „реальной стоимости“, обеспечивающем покрытие средних издержек добычи и транспортировки и дающем разумную прибыль. Катастрофы не произойдет: при таком сценарии нефть из „сверхприбыльного“ и „геополитического“ товара станет товаром просто прибыльным, не приносящим никаких дополнительных дивидендов.

Экономика России и цены на нефть

Хотя некоторые тенденции повышения цен на нефть и существуют, среднемировая цена основных сортов нефти, закупленной на условиях франко-борт (ФОБ) — порт отгрузки *(цена включает в себя издержки производства и транспортировки в порт отгрузки. — пр. авт.)*, в обозримом будущем все равно составит не более 8-10 долларов за баррель. Это означает, что с учетом стоимости фрахта мировой рынок нефти может быть весьма прибыльным даже при устойчивых ценах в 15-18 долларов за баррель основных сортов нефти.

Россия в таком случае, безусловно, оказывается в невыгодном положении: значительное транспортное плечо, по которому нефть доставляется из мест добычи к портам по трубопроводной системе (у других экспортеров такой необходимости протягивать трубопроводы на столь значительное расстояние нет), создает дополнительные издержки в размере примерно 4-5 долларов за баррель. Но даже если цены и упадут, экспорт нефти будет приносить российским компаниям неплохую прибыль. Серьезно снизятся лишь доходы бюджета (шкала налога на добычу полезных ископаемых и экспортных пошлин на нефть сегодня построена таким образом, что риски от падения цен на нефть Brent до 20-22 долларов за баррель целиком лежат на бюджетной системе), а также возможности нефтяного сектора перенаправить капитал в другие сферы экономики. Источником вложений в модернизацию и развитие экономики в этой ситуации смогут быть только внутренние сбережения и иностранные инвестиции, которые уже начили присутствовать в России.[2]

Ярким примером является состоявшийся 29 сентября аукцион по продаже 7,6% акций российского правительства в нефтяной компании „Лукойл“ продлился менее 2 минут. На нем

победил тот, кого публично поддержали российский президент Владимир Путин и руководство „Лукойла". Отличительной особенностью аукциона стало то, что государство продало свой актив за справедливую цену почти в 2 млрд. долл. США, а покупателем стала иностранная компания, американская нефтяная группа „ConocoPhillips". Эта сделка явилась крупнейшей приватизационной сделкой в истории России. „ConocoPhillips" заявила, что намерена в дальнейшем довести свою долю в компании „Лукойл" до примерно 20% и что она имеет конкретные планы сотрудничества с Россией в Ираке. Сделка „ConocoPhillips" уступает разве что той, что была заключена в прошлом году английской компанией „British Petroleum" (BP), которая купила фактически половину российской нефтяной компании ТНК.[3]

Итак, иностранцы в России приветствуются — благодаря их капиталам и их опыту, который необходим для эксплуатации новых месторождений, в частности в шельфовых зонах, например, вокруг о. Сахалин — но, по всей видимости, не в такой роли, в какой выступила BP, купив ТНК. В любом случае, в энергетическом бизнесе в России существует достаточно рисков. Стратег „Альфа-банка" Крис Уифер (Chris Weafer) называет, в частности, неопределенность в отношении режимов лицензирования и налогообложения, а также то, что Россия затягивает вопрос со строительством новых нефтепроводов. Кроме того, в России осталось очень мало нефтяных компаний, за которые стоит биться. С другой стороны, у страдающих от нехватки резервов западных нефтяных компаний почти не остается иного выбора, как только добиваться благорасположения России.

В этом контексте стоит отметить, что российско-американское нефтяное партнёрство — очень важно для обеих стран. Россия рассматривает США в качестве одного из перспективных рынков по экспорту нефти. Об этом недавно сообщил глава Министерства Экономики Развития и Торговли Российской Федерации Герман Греф (Hermann Gref), открывая российско-американский семинар. из 21-ого сентября 2004 г., по вопросам транспортировки нефти и нефтяным рынкам.

„Россия ежегодно увеличивает свое присутствие на мировых рынках и в первую очередь рассматривает возможность увеличения поставок российской нефти на рынок США", — отметил министр. При этом Г. Греф указал, что в настоящее время для увеличения поставок существует ограничение в виде транспортной инфраструктуры.

„Логика развития транспортных маршрутов в России будет определяться теми рынками, на которые мы получим доступ в среднесрочной перспективе", — добавил глава МЭРТ. Со своей стороны США должны рассмотреть возможность развития транспортной и портовой инфраструктуры, а также уточнить те объемы нефти, которые они смогут принимать, заключил Г. Греф.[4]

Стоит также отметить, что и посол США (USA) в Российской Федерайии Александр Вершбоу (Alexander Vershbow), сообщил, что США рассчитывают на расширение проекта Каспийского трубопроводного консорциума (КТК).[5] По его словам, в настоящее время США вкладывают значительные инвестиции в разработку Тенгизского нефтяного месторождения в Казахстане и в КТК. В проекте, в частности, участвуют американские компании ChevronTexaco и Exxon Mobil. Американский посол сказал, что на сегодня инвестиции в эти проекты превышают все основные вложения США в этом регионе. В этой связи, подчеркнул он, США рассчитывают на то, что Казахстан и Россия вскоре договорятся о расширении проекта КТК. Данный проект, по его мнению, создает дополнительные возможности для укрепления взаимоотношений между странами.[6]

Удешевление доллара и нефтяные цены

Свою роль в росте нефтяных цен играет и удешевление доллара. Именно падение в последние годы курса доллара спровоцировало ОПЕК к постановке вопроса о повышении границ ценового коридора с 22-28 до 28-36 долларов за баррель. Возможно, это внесет коррективы в номинальный уровень цен, однако ослабление доллара не является фактором, способным серьезно содействовать реальному подорожанию нефти.

Будут ли ресурсы производителей нефти достаточными для проведения очередного раунда ценовых войн? Не вызовут ли непредвиденные события (например, обострение внутренней напряженности в Саудовской Аравии вдобавок к иракскому конфликту) дополнительный дефицит на рынке? Теоретически все это возможно. Однако в последние годы мировой рынок нефти не стал более зависим от ОПЕК даже при том, что уровень добычи в развитых странах понизился. Доля ОПЕК в мировом производстве снизилась в 2003 году относительно ее среднего значения за последнее десятилетие (39,7 % против 41-42 %). На рынок выходят все новые игроки; основные надежды связаны с Бразилией и Казахстаном, которые уже сегодня добывают более 2,6 млн баррелей в день, или 3,5 % от мирового производства. Существенное влияние на рынок может оказать замедление роста спроса на нефть в Китае. В 2003-м на Китайской Народной Республике пришлось более 40 % прироста мирового спроса. Но в начале 2004 года китайские власти, опасаясь перегрева экономики, ввели инвестиционные ограничения в ряде секторов.

Наконец, неясна судьба Ливии. Улучшение отношений с Западом может возродить давнюю мечту Муамара Каддафи (Moammer al-Geddafi) о восстановлении добычи ливийской нефти на уровне 1970-го (свыше 3,3 млн баррелей нефти в день против сегодняшних менее 1,5). Для этого потребуется два-три года. Скорее всего, западный мир станет активно склонять Ливию к более энергичному наращиванию нефтедобычи и даже к выходу из ОПЕК. Не исключено, что на Венесуэлу и Нигерию будет оказано политическое давление с целью побудить их покинуть ОПЕК. Не лишена внутренних противоречий и сама ОПЕК. Устанавливаемые квоты на добычу нефти практически никогда не соблюдаются, а финансовое положение стран — лидеров картеля (в первую очередь Саудовской Аравии) резко ухудшилось, и сомнительно, чтобы они смогли позволить себе активные ценовые войны „на понижение“.

Таким образом, сценарий обвала цен в ближайшие годы не слишком вероятен, но вполне возможен.

В поисках других видов энергоресурсов

Годы нефти как основного энергетического ресурса, скорее всего, сочтены. Конечно, мировых запасов нефти достаточно для сохранения ее значимой функциональной роли в течение еще 30-40 лет. Однако — и с этим никто не спорит — ее запасы не являются неисчерпаемыми. Хорошо уже то, что не подтвердились теории быстрого истощения ресурсов, согласно которым человечество еще в начале этого столетия должно было лишиться ископаемых запасов нефти. Мир получил достаточную „нефтяную паузу“, а процесс глобального переустройства политической и экономической системы, и без того болезненный, не был усложнен необходимостью совершать „энергетическую революцию“. И все же нефть продолжает потихоньку утрачивать свои позиции. Она уже „уступила“ другим видам топлива, ставшим основой для развития электро- и теплоэнергетики, и сохраняет безусловное лидерство лишь на транспорте.

Развитые страны пытаются найти системные решения, которые помогли бы им ограничить зависимость своих

экономик от органического топлива. К этому их вынуждают рост нефтяных цен, истощение собственных запасов органического топлива, провал политики захвата территорий, богатых энергетическими ресурсами (Ирак). После 2030 года вполне можно ждать мировой „энергетической революции". Ее результатом станет окончательный отказ от использования органического топлива как основного источника энергообеспечения развитых экономик в пользу массового применения альтернативных источников энергии.

Энергетический потенциал природных явлений — солнца, ветра, приливов, водных потоков, геотермального тепла — весьма ограничен. Основной альтернативой органической энергетике может стать лишь энергетика водородная. Ее ресурс (водород) неограничен, а применяемые технологии хорошо изучены (необходим лишь ряд прикладных исследований, расширяющих возможности использования уже разработанных топливных элементов на основе водорода). Кроме того, водородная энергетика высокопродуктивна, высокотехнологична и эффективна. Водородный топливный элемент — универсальный источник энергии, который может использоваться в энергетике, на транспорте (в т. ч. автомобильном), в быту.

Правительства и частный бизнес развитых стран активно инвестируют в развитие водородной энергетики (в 2003-м администрация США выделила на эти цели миллиард долларов, в Японии налажен серийный выпуск автомобилей, работающих на водородных топливных элементах). Если накопится достаточно всеобъемлющих прикладных исследований и осуществятся меры, стимулирующие инвестиции в расширение использования топливных элементов, водород как источник энергии, возможно, будет замещать после 2030 года до 30-40 % традиционной органической энергетики. Согласно обзору World Energy Investment Outlook, 2003, подготовленному Международным энергетическим агентством, именно к этому периоду удельные капитальные затраты на ввод энергомощностей на водородных топливных элементах снизятся до уровня конкурентоспособности по отношению к традиционной энергетике.

Реализация революционного сценария в энергетике может способствовать тому, что передовые страны Запада окончательно обгонят остальной мир по уровню влияния, а также экономического и технологического развития.

У России пока нет оснований для паники. Если руководство страны всерьез озаботится диверсификацией структуры национальной экономики в пользу высокотехнологичных обрабатывающих отраслей и начнет движение в этом направлении, то к 2020-2030 годам критическая зависимость экономического развития от нефтяного сектора, скорее всего, снизится. Россия может получить собственную нишу в сфере глобального развития высокотехнологичных производств, связанных с „новой энергетикой", а нефтяной сектор по мере выработки основных месторождений будет трансформироваться в обычный, ориентированный в основном на покрытие внутреннего потребления, сектор экономики с объемом добычи 250-300 млн тонн в год.

Вот только позволит ли экономическая политика Кремля подготовить Россию к такому сценарию? Пока он лишь демонстрирует склонность выдавать за собственные успехи итоги структурных преобразований 90-х годов и плоды блестящей конъюнктуры мировых нефтяных цен. Продолжение структурных реформ в экономике раз за разом откладывается в ущерб эфемерной политической стабильности, а реальной программы национального экономического прорыва невзирая на громкие призывы к удвоению ВВП (GDP) не существует. А между тем „нефтяные часики" неумолимо продолжают тикать.

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[6] В начало этого года, в своей статьи, опубликованной в американском журнале „Форйен Аффэйрс" („Foreign Affairs"), госсекретарь США Колин Пауэлль (Colin Powell) утверждал, что „американско-российские коммерческие отношения были расширены и они будут расширены в пользу обеих сторон; мы также верим в энергетическую отрасль", см. Colin L. Powell, *A Strategy of Partnerships*, „Foreign Affairs", January/February 2004, http://www.foreignaffairs.org

Quelques commentaires sur la Constitution de l'Europe

Georgiana-Margareta Scurtu

Près de 50 ans après le début de la construction européenne, il était temps de fondre dans un texte unique les différents traités qui se sont succédés au fil des ans. Pour adapter les institutions d'une Europe passée de 6 à 25 membres au cours des élargissements successifs. Ainsi, pour la première fois, on rassemble dans un texte unique, les valeurs, les objectifs, les compétences et les politiques de l'Union Européenne.

Le projet de Constitution est le résultat d'une démarche innovante: il a été préparé par la Convention pour l'avenir de l'Union Européenne, présidée par Valéry Giscard d'Estaing, qui a associé étroitement non seulement les représentants des Etats, mais également les Parlements nationaux et européen, ainsi que la société civile. Le large débat ainsi organisé a permis d'aboutir à un consensus sur un texte ambitieux. Ce projet a servi de base pour les travaux de la Conférence intergouvernementale (CIG), qui a réuni les représentants des gouvernements, ainsi que la Comission européenne et le Parlement européen depuis le mois d'octobre 2003. Le texte adopté lors du Conseil Européen des 17 et 18 juin 2004 préserve l'essentiel des propositions de la Convention. Le 29 octobre 2004, les chefs d'Etat et de governement des 25 Etats membres ont signé a Rome le Traité constitutionnel.

Les 448 articles du document sont structurés en quatre parties: les dispositions fondamentales de la Constitution (objectif – compétences – procédures décisionnelles – institutions); la Charte des droits fondamentaux; les politiques de l'Union (reprise des dispositions des traités actuels); les clauses finales (procédures d'adoption et de révision).

La Constitution pour l'Europe reste juridiquement un traité international signé entre les Etats souverains. L'utilisation du terme *"Constitution"* n'a ainsi ni pour objet ni pour effet de créer un Etat européen qui se substituerait aux Etats membres dans l'ordre juridique international. La Constitution européenne ne remplace donc pas les lois fondamentales nationales qui continuent et continueront à l'avenir de régir l'organisation des pouvoirs publics dans chacun des pays membres. Au demeurant, la Constitution européenne précise que l'Union respecte l'identité nationale des Etats membres, „inhérente à leurs structures fondamentales politiques et constitutionnelles". En revanche, le choix de se référer à une *„Constitution"* illustre le caractère fondateur que revêt le texte, ainsi que l'ambition politique qui a animé ses négociateurs: celle de bâtir une „maison commune", reposant sur des valeurs et des règles partagées.

Le traité constitutionnel consacre des changements institutionnels importants. Ainsi, le Conseil Européen devient une institution à part entière qui adopte des décisions et peut voter et dont les actes sont susceptibles d'un contrôle par la Cour de Justice. Il est doté, comme le Parlement européen et comme la Commission, d'un président à plein temps (il ne peut exercer de mandat national), élu à la majorité qualifiée par le Conseil européen pour deux ans et demi renouvelables une fois.

Le président du Conseil Européen remplit quatre charges fondamentales: 1) assure à son niveau et dans sa qualité la représentation

extérieure de l'Union pour les matières relevant de la politique étrangère et de sécurité commune, sans préjudice des compétences du ministre des Affaires Etrangères de l'Union; 2) préside et anime les travaux du Conseil Européen, comme le faisait le chef d'Etat ou de gouvernement qui assurait la présidence semestrielle de l'Union; 3) oeuvre en faveur de la recherche du consensus entre les Etats membres; 4) dialogue avec les autres institutions: il est chargé de remettre le rapport du Conseil Européen devant le Parlement européen après chacune de ses réunions. Même si la présidence des Conseils reste semestrielle, elle devra s'exercer au sein d'un programme commun, défini par les trois présidences se succédant sur une période de dix-huit mois.

Jusqu'à présent, la majorité qualifiée est définie selon un système de pondération des voix dans lequel chaque Etat membre se voit attribuer par les autres et avec son accord un certain nombre de voix, en fonction de son poids démographique, économique ... Les négociations du Traité de Nice ont montré combien il était délicat de négocier le poids relatif de chaque Etat. La Constitution y substitue, à partir du 1er novembre 2009, une règle de vote plus transparente, plus objective et plus démocratique, fondée sur une double majorité d'Etats et de population: une décision est réputée adoptée au sein du Conseil si elle réunit au moins l'accord de 55% des Etats de l'Union (soit à 27, 15 Etats membres) représentant au moins 65% de la population de l'Union; une minorité de blocage doit inclure au moins quatre Etats membres, faute de quoi la majorité qualifiée est considérée comme atteinte. Ce système limite le pouvoir de blocage des Etats et facilite la prise de décision. Aussi, à titre transitoire jusqu'en 2014, il a été prévu que le Conseil, même s'il constate qu'une majorité qualifiée existe en faveur d'un texte, s'engagerait à poursuivre pendant un délai raisonnable les négociations pour tenter d'y rallier les Etats qui s'y opposeraient sans être suffisamment nombreux ou peuplés pour constituer une minorité de blocage en vertu du nouveau système. Pour autant, le Conseil peut à tout moment décider de passer au vote.

Grâce à la Constitution, l'Union Européenne aura une Commission plus efficace. La première Commission nommée après l'entrée en vigueur de la Constitution comprendra, comme actuellement, un ressortissant de chaque Etat membre (2009-2014). Ensuite, la taille de la Commission (y compris le président de la Commission et le Ministre des Affaires Etrangères de l'Union) sera réduite à un nombre correspondant aux deux tiers des Etats membres. Les membres seront sélectionnés selon un système de rotation égale entre les Etats membres, y compris pour le président de la Commission et le Ministre européen des Affaires Etrangères. Ainsi, une Europe à 27 membres n'aura que 18 Comissaires; cette Comission reserrée sera plus efficace et mieux à même d'incarner l'intérêt général européen qu'elle ne l'est aujourd'hui.

Le président de la Commission aura des pouvoirs renforcés. Ainsi, il jouira d'une plus grande légitimité, car il sera élu par le Parlement européen à la majorité de ses membres sur proposition du Conseil Européen, en fonction du résultat des élections européennes; avant de proposer un candidat, le Conseil Européen devra également se concerter avec le Parlement. Le président de la Comission aura aussi une plus grande autorité sur le collège et pourra également demander la démission d'un Commissaire (le traité actuel prévoit que cette possibilité est subordonnée à l'approbation du collège).

La Constitution établit des règles de vote plus efficaces et plus équitables au Conseil des Ministres: à partir de 2009, une décision est réputée adoptée au sein du Conseil si elle réunit au moins l'accord de 55% des Etats de l'Union (soit à 27, 15 Etats membres) représentant au moins 65% de la population de l'Union. Le champ des décisions prises à la majorité qualifiée est notablement étendu, ce qui permettra d'éviter la paralysie de l'Europe élargie: environ 25 types de décisions passent de l'unanimité à la majorité qualifiée. Cette extension porte notamment sur les questions relatives au droit pénal et civil, à la politique d'asile et d'immigration, aux actions de promotion de la culture et à toutes les nouvelles compétences de l'Union. Une minorité de

blocage doit inclure au moins quatre Etats membres, faute de quoi la majorité qualifiée est considérée comme atteinte. Ce système limite le pouvoir de blocage des Etats et facilite la prise de décision. Aussi, à titre transitoire jusqu'en 2014, il a été prévu que le Conseil, même s'il constate qu'une majorité qualifiée existe en faveur d'un texte, s'engagerait à poursuivre pendant un délai raisonnable les négociations pour tenter d'y rallier les Etats qui s'y opposeraient sans être suffisamment nombreux ou peuplés pour constituer une minorité de blocage en vertu du nouveau système. Pour autant, le Conseil peut à tout moment décider de passer au vote.

La Constitution marque des avancées importantes en donnant à l'Union les moyens de développer la cohérence et l'efficacité de sa politique extérieure. Son texte prévoit la création d'un ministre européen des Affaires Etrangères. Dorénavant, un seul responsable exercera des fonctions éclatées entre la Commission (pour ce qui est des relations extérieures avec les pays tiers: par exemple l'instauration de partenariats avec les pays de la Méditerranée ou d'un accord d'association avec les pays des Balkans) et les Etats membres à travers le Conseil (par le biais du haut représentant pour la Politique Etrangère et de Sécurité Commune). Le Ministre européen des Affaires Etrangères sera ainsi le visage de l'Union à l'étranger, il pourra proposer que soient utilisés tous les outils de la politique étrangère, les instruments politiques, financiers et militaires, au service d'un même objectif. Il présidera le Conseil des Affaires Etrangères qui réunit tous les ministres des Affaires Etrangères de l'Union.

La Constitution prévoit la mise en place d'un service diplomatique européen à l'appui du Ministre des Affaires Etrangères de l'Union, réunissant fonctionnaires du Conseil, de la Commission et des Etats membres, et englobant les ambassades de l'Union à l'étranger. Toutefois, il y a un renforcement des pouvoirs du Parlement européen: la codécision s'applique désormais à la coopération économique, financière et technique avec les pays tiers; son approbation est désormais requise pour la grande majorité des accords internationaux. En outre, la Constitution consacre un nouvel article relatif à l'action humanitaire avec la possibilité de mettre en place un corps volontaire européen d'aide humanitaire.

Le Parlement européen aura une composition plus encadrée, pour deux raisons: le plafonnement du nombre des membres à 750 (contre 736 dans le Traité d'adhésion ou 732 dans le Traité de Nice); un seuil minimum de 6 parlementaires par Etat membre (contre 4 sièges au minimum dans le projet issu de la Convention Européenne). C'est dans le respect de ces paramètres que devra être définie la composition du Parlement européen en temps utile avant les élections de 2009.

Sur le plan institutionnel, la Constitution renforce le rôle du Parlement européen. Ainsi, le Président de la Commission européenne est élu par celui-ci: le Conseil Européen propose un candidat en tenant compte des élections européennes; la Conférence intergouvernementale a renforcé le rôle du Parlement Européen en amont de la proposition du Conseil européen, en prévoyant une concertation préalable entre les deux institutions. En même temps, le Parlement européen a un droit d'initiative pour la révision au même titre que le Conseil et la Commission. En plus, 27 domaines d'action de l'Union passent à la codécision: 1) marché intérieur (exclusion de certaines activités de l'application des dispositions relatives à la liberté d'établissement; extension du bénéfice des dispositions relatives aux prestations de services aux ressortissants d'un pays tiers établis dans la Communauté; libéralisation des services; adoption d'autres mesures relatives aux mouvements des capitaux à destination ou en provenance de pays tiers); 2) gouvernance économique – Union Economique Monétaire (modalités de la procédure de surveillance multilatérale; application des Grandes Orientations de Politique Economique; modification du protocole sur les statuts du Système Européen des Banques Centrales et la Banque Centrale Européenne); 3) justice et Affaires Intérieures (contrôle des personnes aux frontières; asile; immigration; coopération judiciaire en matière pénale; règles minimales pour la définition d'infractions et de sanctions en

matière de criminalité grave; mesures d'appui dans la prévention du crime; structure, fonctionnement et domaines d'action d'*Eurojust*; coopération policière; structure, fonctionnement et domaines d'action d'*Europol*); 4) Cour de Justice (création de tribunaux spécialisés; modalité de recours de la Cour de Justice en matière de propriété intellectuelle; modification du statut de la Cour de Justice); 5) budget (adoption du règlement financier à partir de 2007; fonds structurels et fonds de cohésion à partir de 2007); 6) accords acommerciaux (politique commerciale – mesures de mise en œuvre); 6) agriculture (application des règles de concurrence à la Politique Agricole Commune; législation en matière de Politique Agricole Commune); 7) autres domaines (modalités de contrôle des compétences d'exécution; coopération économique, financière et technique avec des pays tiers; établissement du statut de fonctionnaires de la Communauté européenne et du régime applicable aux autres agents de l'Union).

Sur les autres domaines qui restent en dehors du champ de la codécision, le Parlement obtient un renforcement de ses pouvoirs: le pouvoir d'initiative et le dernier mot sur la loi définissant les modalités d'exercice de son droit d'enquête; la procédure d'approbation sur les modalités des ressources propres, au lieu d'une simple consultation; la procédure d'approbation sur l'extension des droits liés à la citoyenneté; un pouvoir de consultation sur des domaines dans lesquels il n'avait aucun droit de regard (mesures nécessaires pour faciliter la protection diplomatique et consulaire des citoyens de l'Union; mesures réalisant un retour en arrière sur la libéralisation des capitaux à destination ou en provenance des pays tiers).

Un droit d'initiative citoyenne sera instituée, qui permettra à un million de citoyens de l'Union, issus des différents Etats membres, d'inviter la Commission à soumettre une proposition législative. Le dialogue civil et social est consacré avec la reconnaissance de divers mécanismes de consultation, notamment le sommet social tripartite entre les partenaires sociaux européens et l'Union. En plus, la transparence des travaux du Conseil lorsque ce dernier délibère sur une loi européenne permet une réelle information et participation de la société civile.

La Charte des droits fondamentaux est introduite dans la Constitution: elle renforce la protection des citoyens et met en évidence les engagements éthiques de l'Union Européenne. Il s'agit des droits concrets, qui consacrent les valeurs de respect de la dignité humaine, la liberté, la démocratie, l'égalité entre les hommes et les femmes, la justice, la solidarité entre les générations et la protection des droits de l'enfant. Le rôle des partenaires sociaux dans la „vie démocratique de l'Union" est reconnu dans la Constitution européenne. Toutefois, une clause sociale générale est introduite, qui exige la prise en compte des „exigences liées à la promotion d'un niveau d'emploi élevé, à la garantie d'une protection sociale adéquate, à la lutte contre l'exclusion sociale ainsi qu'à un niveau d'éducation, de formation et de protection de la santé humaine" dans la définition et dans la mise en oeuvre de l'ensemble des politiques de l'Union. Significativement, cette disposition est placée en tête de la partie III consacrée aux politiques de l'Union. D'autre part, les services publics („services d'intérêt économique général" – SIEG) sont dotés d'une base juridique spécifique, qui doit permettre de définir les principes et les conditions qui régissent l'accomplissement de ceux-ci. Il s'agit d'une avancée juridique importante pour la cohésion sociale et territoriale et la préservation du „modèle social européen". Ce faisant, les Etats membres conserveront la compétence de „fournir, de faire exécuter et de financer" leurs services publics.

Les compétences d'appui aux Etats dans le domaine social sont maintenues à la majorité qualifiée. Cela concerne l'amélioration des conditions de travail, l'information et la consultation des travailleurs, l'intégration des personnes exclues du marché du travail, l'égalité des chances et de traitement entre les femmes et les hommes en matière d'emploi et de travail, la lutte contre l'exclusion sociale, la modernisation des systèmes de protection sociale. La Constitution européenne préserve également la possibilité pour le Conseil de décider à l'unanimité de passer à la majorité

qualifiée dans un certain nombre de domaines, notamment: la protection des travailleurs en cas de résiliation du contrat de travail, la représentation et la défense collective des intérêts des travailleurs et des employeurs, y compris la cogestion. Dans tous les cas, le Conseil adopte des normes minimales mais n'interdit pas aux Etats membres qui le souhaitent d'adopter des règles nationales plus élevées. En même temps, une nouvelle base juridique est introduite qui permettra à l'Union d'intervenir dans le domaine de la santé publique.

Le traité de Maastricht, en établissant l'Union économique et monétaire, avait ouvert la voie à la monnaie unique. Depuis le 1er janvier 2002, l'euro a remplacé les devises nationales de douze pays de l'Union européenne: l'Allemagne, l'Autriche, la Belgique, l'Espagne, la Finlande, la France, la Grèce, l'Irlande, l'Italie, le Luxembourg, les Pays-Bas et le Portugal. Ces Etats se réunissent au sein d'une structure informelle, l'Eurogroupe, créée en 1997. Mais les décisions sur l'euro restent prises par l'ensemble du Conseil où siègent également les Etats qui n'utilisent pas l'euro. La Constitution européenne renforce la coordination des politiques économiques au sein de la „zone euro" et favorise l'émergence d'un véritable gouvernement économique de l'Europe. Ainsi, l'Eurogroupe est renforcé : son existence en tant qu'enceinte informelle est reconnue. Il est doté d'une présidence stable de deux ans et demi qui permettra d'assurer une représentation unifiée au sein des institutions et conférences financières internationales. Par anticipation du traité constitutionnel, les ministres des Finances ont décidé en septembre 2004 de confier cette fonction à M. Jean-Claude Juncker, premier ministre et ministre des Finances du Luxembourg. Le pouvoir autonome des douze Etats membres de la zone euro et leur capacité de décision sont renforcés. Dorénavant, les Etats de la zone euro voteront seuls les décisions qui les concernent en matière de coordination des politiques économiques et de déficit public excessif. Ils pourront également développer une coordination spécifique en matière budgétaire et de politique économique. De même, l'entrée dans la zone euro, qui continuera d'être adoptée par l'ensemble des Etats membres, sera prise après recommandation des Etats ayant adopté la monnaie unique.

La Constitution confère de nouvelles compétences à l'Union: le sport, l'énergie, la protection civile, la protection intellectuelle, l'espace, le tourisme, la coopération administrative, les mesures nécessaires à l'usage de l'euro, sanctions financières contres des personnes ou groupes criminels. Mais surtout, elle renforce deux secteurs essentiels pour l'avenir de l'Union et qui sont au cœur des préoccupations des Européens: la défense, d'une part, l'espace de liberté, de sécurité et de justice, d'autre part avec la création, notamment, d'un Parquet européen.

En matière de sécurité et de défense, la Constitution consacre plusieurs avancées majeures: une clause de défense mutuelle et une clause de solidarité affirment, pour la première fois dans le cadre de l'Union, le principe d'un devoir d'assistance mutuelle entre Européens, y compris par des moyens militaires, face à tout type de menaces, notamment terroristes. La gamme de missions que l'Union peut mener dans le cadre de sa politique de sécurité et de défense est étendue à la lutte contre le terrorisme, les missions de prévention des conflits, les missions de stabilisation post-conflit. La Constitution prévoit aussi la mise en place d'une « coopération structurée», fer de lance de la politique de sécurité et de défense de l'Union. Y participeront les Etats membres remplissant des critères plus élevés et souscrivant à des engagements renforcés en matière de défense, à vocation à remplir les missions les plus exigeantes sur le plan militaire pour le compte de l'Union, en particulier pour répondre à des demandes de l'Organisation des Nations Unies. D'autre part, une Agence européenne de l'Armement est créée afin de promouvoir le développement d'une politique européenne de l'armement et de coordonner l'effort d'équipement des différentes armées nationales. Cette Agence est d'ores et déjà en cours de création sur la base des traités actuels, mais la Constitution permettra d'étendre son champ d'activité.

L'abolition des frontières intérieures, la liberté de circulation et d'installation des personnes dans l'ensemble de l'Union, constituent des progrès importants. Ces réalisations doivent avoir pour contrepartie une solidarité accrue entre les Etats membres pour renforcer ensemble le contrôle aux frontières extérieures de l'Union, rapprocher leurs politiques d'asile et d'immigration, coopérer enfin dans la lutte contre la criminalité transfrontalière. Tel est l'enjeu de l'espace de liberté, de sécurité et de justice que l'Union s'attache à développer. Parmi les politiques „internes", c'est précisément dans ces matières que la Constitution européenne apporte les aménagements les plus importants, du fait notamment de la suppression des piliers, de l'extension de la procédure législative ordinaire dans laquelle le Parlement européen est co-législateur et de la généralisation du vote à la majorité qualifiée, tout particulièrement en matière pénale. Sur le fond, la Constitution européenne clarifie les objectifs des différentes politiques et en précise la définition.

Depuis cinq ans, l'Union a progressé considérablement vers une politique commune d'asile: elle dispose aujourd'hui de règles minimales communes en matière de procédure d'asile, de statut et d'accueil des réfugiés. Sur l'immigration, l'Union a renforcé efficacement le contrôle de ses frontières extérieures, en créant, en particulier, un système d'information commun. Elle s'est aussi dotée d'une politique commune de visas. De même, l'Union a défini des règles minimales communes à tous les Etats pour favoriser l'intégration des immigrés légaux (droit au regroupement familial, droits des résidents de longue durée). Avec la Constitution européenne, les politiques en matière d'asile et d'immigration sont consacrées comme politiques communes de l'Union, régies par les principes de solidarité et de partage équitable des responsabilités entre Etats Membres. La Constitution européenne crée ainsi les conditions d'une politique commune contre l'immigration illégale et les trafics, ainsi qu'en matière d'intégration des immigrés. La Constitution européenne fixe également l'objectif d'un statut uniforme du droit d'asile en Europe, au-delà des règles minimales dont l'Union s'est dotée en la matière.

La mise en place d'une politique européenne en matière de justice, complément indispensable de la libre circulation, repose sur deux instruments: la reconnaissance par tous les Etats membres des décisions de justice rendues dans tel ou tel pays européen et un degré suffisant d'harmonisation du droit et d'entraide. La Constitution européenne permet d'adopter à la majorité qualifiée les mesures: concernant la circulation et la reconnaissance dans tous les Etats membres des décisions de justice; fixant des règles minimales d'accès à la justice et d'obtention des preuves; définissant au niveau européen quel tribunal est compétent, quel droit s'applique lorsque une affaire concerne plusieurs Etats.

Depuis 5 ans, l'Union s'est fortement engagée dans la lutte contre la criminalité transfrontalière, avec des résultats concrets: création d'Eurojust, qui réunit des magistrats des 25 Etats membres pour coordonner les enquêtes et les poursuites ; renforcement d'Europol (système d'échange d'information entre les Polices des Etats membres) en matière de coopération policière; création d'équipes communes d'enquête entre les policiers de divers Etats membres; création en 2004 d'un mandat d'arrêt européen pour faciliter la remise des personnes recherchées entre Etats membres. La Constitution européenne promeut le rapprochement des législations pénales, par l'adoption de règles de procédure pénale ainsi que de règles minimales définissant les infractions et les sanctions pour un certain nombre de crimes graves qui revêtent une dimension transfrontalière ou nécessitent une action menée en commun. Il s'agit d'une avancée importante au regard des textes existants.

La Constitution européenne étend la liste de ces crimes: terrorisme, traite des êtres humains et exploitation sexuelle des femmes et des enfants, trafic illicite de drogues, trafic illicite d'armes, blanchiment d'argent, corruption, contrefaçon de moyens de paiement, criminalité informatique et criminalité organisée. Cette liste peut être augmentée par une décision du Conseil.

Dorénavant, la Cour de Justice pourra pleinement contrôler et interpréter les actes législatifs relevant du domaine pénal, notamment au regard de la Charte des droits fondamentaux.

La Constitution européenne prévoit également l'institution, par loi européenne adoptée à l'unanimité par le Conseil, d'un Parquet européen compétent pour combattre les infractions portant atteinte aux intérêts financiers de l'Union. Une clause „passerelle" prévoit la possibilité d'extension des attributions du Parquet européen à la lutte contre la criminalité grave ayant une dimension transfrontière, moyennant une décision européenne prise par le Conseil à l'unanimité, après approbation du Parlement européen (et consultation de la Commission).

De façon générale, la Constitution permet la définition d'un mécanisme d'évaluation de la qualité des systèmes judiciaires, destiné à renforcer la confiance mutuelle entre juges nationaux appelés à coopérer plus étroitement. Désormais également, l'Union pourra soutenir la formation des magistrats et des personnels de justice.

La Cour de Justice comprend plusieurs juridictions: la Cour de Justice Européenne, le Tribunal de grande instance et des tribunaux spécialisés dans certaines matières. Le traité constitutionnel prévoit la création d'un comité composé d'anciens membres de la Cour, du Tribunal ou des juridictions suprêmes des Etats membres et chargé de rendre un avis sur les candidats proposés par les Etats membres pour devenir juges ou avocats généraux. Il y a aussi une extension de la procédure législative ordinaire (majorité qualifiée et codécision) à la création de tribunaux spécialisés, à la modification du statut de la Cour (sauf le régime d'immunité des juges et le régime linguistique), à l'extension de la compétence de la Cour aux litiges concernant des titres de propriété industrielle ainsi qu'aux modifications du statut de la Cour. La Constitution consacre la possibilité pour la Cour d'assortir d'une amende ou d'une astreinte les condamnations en manquement pour défaut de transposition d'une directive. D'autres éléments importants sont: l'accélération de la procédure de saisine de la Cour par la Commission en cas de non-exécution d'un arrêt en manquement (suppression de la phase de l'avis motivé); extension du droit de recours en annulation des particuliers aux actes adoptés par les agences et organes de l'Union ainsi qu'aux actes réglementaires qui les concernent directement et ne comportent pas de mesures d'exécution attaquables devant les juridictions nationales ou communautaires; reconnaissance d'une compétence limitée de la Cour en matière de Politique Etrangère et de Sécurité Commune (recours des particuliers touchés par une mesure restrictive : gel d'avoirs, interdiction de visa, etc...); création d'un droit de recours pour un Etat membre sanctionné par ses pairs pour violation ou risque de violation grave et persistante des droits fondamentaux, afin de faire vérifier la régularité de la procédure suivie; obligation pour la Cour de statuer dans les plus brefs délais sur les questions préjudicielles concernant une personne détenue.

Le Comité des régions voit son rôle renforcé, sans pour autant obtenir le statut d'institution. Sa composition n'est plus fixée par le traité mais fait l'objet d'une décision du Conseil, régulièrement modifiée afin de tenir compte de l'évolution économique, sociale et démographique de l'Union. La Constitution reconnaît son droit de recours devant la Cour de justice tendant à la sauvegarde de ses prérogatives, ainsi que celui de saisir la Cour de Justice pour violation du principe de subsidiarité par un acte pour lequel il doit être consulté (protocole sur l'application des principes de subsidiarité et de proportionnalité).

Le Comité économique et social désigne parmi ses membres son président et son bureau pour une durée de deux ans et demi et non plus deux ans. Il peut être convoqué non seulement par le Conseil des ministres et la Commission mais aussi, désormais, par le Parlement.

La Constitution accorde à tout Etat membre le droit de retrait sur une base volontaire. Dans l'état actuel des traités, un Etat membre n'aurait le droit de se retirer de la Communauté que si tous les autres Etats membres y consentaient. En effet, dans le silence des traités en matière de retrait, les règles de droit coutumier des traités s'appliqueraient. La Constitution prévoit

une procédure de retrait volontaire de l'Union par laquelle tout Etat peut décider, conformément à ses règles constitutionnelles, de se retirer de l'Union.

L'article 447 de la Partie IV du traité dispose que „le traité entre[ra] en vigueur le 1er novembre 2006, à condition que tous les instruments de ratification aient été déposés, ou, à défaut, le premier jour du deuxième mois suivant le dépôt de l'instrument de ratification de l'État signataire qui procède le dernier à cette formalité". Par conséquent les Etats membres n'ont théoriquement pas de date butoire pour ratifier le texte.

Le traité constitutionnel n'entrera en vigueur qu'après sa ratification par tous les Etats membres de l'Union Européenne. A ce jour, les autorités des 25 pays membres, quelque soit le mode choisi pour la ratification (voie parlementaire ou référendum), s'engagent auprès de leur opinion publique en faveur de l'adoption de la Constitution. Aucun Etat ne s'inscrit dans la perspective d'un échec. Si l'un des Etats membres ne devait pas ratifier le traité dans les deux ans qui suivent sa signature survenue à Rome le 29 octobre 2004, il n'existerait d'autre alternative que de revenir aux dispositions actuelles. Le Conseil européen, qui réunit les chefs d'Etat ou de Gouvernement des pays membres, sera alors saisi de la question.

La révision de la Constitution européenne est prévue dans la quatrième partie du traité. Le texte reconnaît que tout gouvernement d'un Etat membre ainsi que le Parlement européen et la Commission européenne peuvent soumettre au Conseil européen des projets de révision du traité. Deux modes de révision sont prévus. Le premier en est la procédure de révision ordinaire (art. 443): si le Conseil européen décide, à la majorité simple, d'examiner les projets proposés, son président convoque une Convention. Celle-ci est chargée d'examiner les projets et d'adopter une recommandation destinée à la Conférence des représentants des gouvernements des Etats membres qui arrêtera „d'un commun accord les modifications à apporter au présent traité" (art. 443 § 3). Les modifications peuvent entrer en vigueur une fois qu'elles ont été ratifiées par l'ensemble des Etats membres. Le deuxième mod de revision est la procédure de révision simplifiée (art. 444): il s'agit de la procédure de „clause passerelle": le Conseil européen peut décider à l'unanimité d'autoriser le Conseil des ministres à statuer à la majorité qualifiée dans les domaines relevant à l'origine de l'unanimité (avec une exception pour le domaine de la défense). Cette initiative du Conseil européen doit être notifiée aux parlements nationaux et en cas d'opposition d'un parlement, la décision n'est pas adoptée.

Le Parlement lituanien a ratifié le texte constitutionnel avec 84 votes pour, 4 contre et 3 abstentions. Selon législation de l'Etat balte, le vote devait recueillir une majorité parlementaire simple pour que le traité constitutionnel soit approuvé, à condition qu'au moins les deux cinquièmes des députés se prononcent en sa faveur. La série ouverte par la Lituanie sera continuée par l'Espagne, pays qui organisera le premier referendum sur la Constitution, le 27 février 2005.

Voilà cinq raisons pour lesquelles je voterais la Constitution européenne: 1) avec un traité unique, l'Union Européenne est consolidée et son fonctionnement simplifié; 2) affirmation du rôle de l'Union Européenne sur la scène internationale grâce à la création du poste de ministre des Affaires Etrangères; 3) définition des relations entre l'Union et les Etats membres et respect explicite de l' „identité nationale", des „structures fondamentales politiques et constitutionnelles" et des „fonctions essentielles de l'État" de chaque Etat membre (article I-5); 4) extension du vote à la majorité qualifiée permettant de réduire les risques de blocage par le veto d'un Etat membre; 5) par l'intégration de la Charte des droits fondamentaux à la Constitution, les droits des citoyens européens sont renforcés; un droit d'initiative populaire permettra à un million de citoyens de l'Union, issus de différents pays membres, d'inviter la Commission européenne à soumettre une proposition législative.

Communication Strategies Within the Member States and Candidate Countries Concerning the European Union Enlargement

Ioana Gligor

In a democratic society, a complex process as enlargement can be achieved only by the citizens' participation. The current European Union enlargement is the most complex in its history and requires an attentive preparation, including the attitude of the citizens from the member states (including the former candidate countries), from Romania and Bulgaria towards this process. Therefore communication with the public opinion is essential. The second reason for communicating is the necessity to accelerate the implementation of the acquis communautaire, by informing and consulting the target groups.

In this paper, we will analyse the public opinion from the 12 candidate countries and 15 member states[1].

The public opinion is not homogenous in the member states and candidate countries, illustrating different attitudes towards the enlargement process and their country's accession to the European Union, reacting very differently to the European issue, European identity, EU institutions, enlargement etc., according to specific cultural, economic, and social patterns. Some influence factors could change this attitude. Nationalist movements, social actors and groups could persuade the public opinion.

The aim of this paper is to analyse the evolution of the public opinion in the European Union and the candidate countries (former and current candidates) and the effect of communication campaigns in some member states and former candidate countries. The communication strategies within the Member States and candidate countries have been very different in both finality and tools. In member states, the aim has been to inform and enhance the acceptance of the public for the enlargement process, while most of the candidate countries aimed to mobilize the citizens to vote in the referendum and to prepare internally to cope with the competition on the EU market.

The case studies are focused on two former candidate countries: Hungary and Poland, and a member state: Germany. Poland was the largest candidate country, with powerful social actors (church, farmers), actively involved in the accession negotiations. They have had a strong impact on the public opinion. The paradox is that, now, after the EU accession, the farmers, the strongest opponents of accession with a discourse highly focused on costs, have become one of the biggest beneficiaries of this process, profiting from the increased prices and the EU payments. In Hungary, there was a huge campaign for mobilising citizens to vote for the EU accession, but the results were rather poor (under 50% participation rate, 84% voting in favour of accession). Germany is the main contributor to the EU budget, having a different attitude towards enlargement, due to the re-unification.

The European Union, Seen by Citizens of the Member States and Candidate Countries (the 10 new Member States, Romania and Bulgaria)[2]

Europe can be defined geographically, but this definition is of secondary importance. When it is mentioned – mainly in the candidate countries – it is to exclude countries or areas which do, nevertheless, objectively constitute part of the European continent according to criteria other than geography, i.e., Russia (with the sole possible exception of its far western fringe, accepted by some as being historically European) and, by extension, Ukraine and Belarus. Turkey is also often spontaneously considered to be non-European. What makes Europe is mainly its history and culture. When perceptions of its identity and the feeling of being European are analysed, the main dividing line runs between a very big South and a very small North.

"South" includes the vast majority of European countries, both Member States and candidate countries, geographically in the south, centre or east of the continent, whose citizens, who are strongly aware of the existence of cultural ties. see in Europe first and foremost a historical entity, a land – even *the* land – of culture, a place of constant combination and exchange over the centuries between diverse peoples but with common roots.

These relationships have loosened in certain periods of history and degenerated into conflict, but their existence down the ages is undeniable.

Feeling European in the Member States (EU - 15)

Citizens of all these countries feel, more or less spontaneously, that this model, built on the foundations of cultural and humanistic values, is unique (according to the Optem study). There is a more or less spontaneous empathy for other Europeans – even if people are not very familiar with them, or attribute certain flaws or different ways of seeing things to them. The force of cultural ties is felt with particular intensity in the Latin countries, Belgium and Luxembourg, and in most Central European countries. It has less of a pull for the Germans (who aspire to be more European, but at the same time are sensitive to disparities), the Irish (who are rather cut off from the others by virtue of being an island and the fact that many of them lack knowledge of the languages of the other countries, but who are open to new ideas) and the Finns (also somewhat isolated in their corner of the far Northwest of the continent, but very curious and contact-friendly).

Conversely, in a few countries located in the northern part of Europe, the concepts of roots and cultural proximity are given much less prominence, and the sense of common historical and cultural ties is much less present in people's minds. Of the Member States, this applies to the UK – many of whose citizens, when asked, refused to consider themselves as Europeans, the Netherlands, Denmark and (less strongly) Sweden: in these countries there is a deep-seated conviction of the superiority or specificity of the model of society that the country has developed with its own values, and a weak propensity to share with others, who tend to be seen as a threat. These countries have only weak empathy with other Europeans, particularly with those in the South, whose mentality is seen as very different, and who are even quite overtly despised (for not being responsible, hard-working, orderly, etc.)

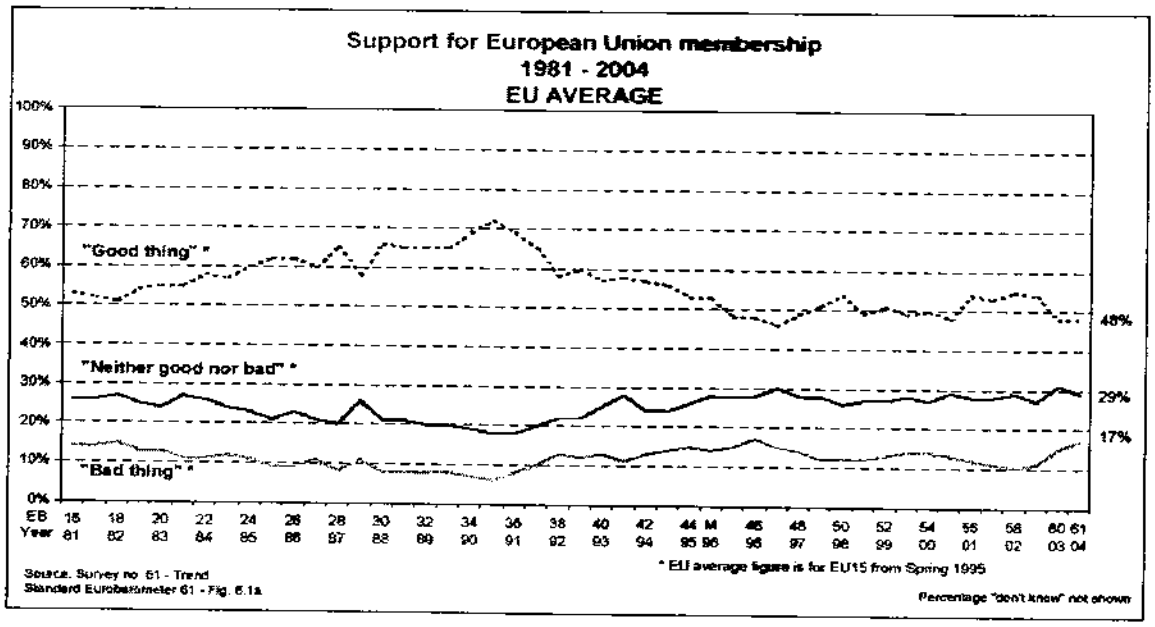
Image of European Union in the Member States (EU - 15)

The Optem study revealed that the citizens of the countries in the geographical South are generally favourable towards the idea of a strong European Union, with the purpose of bringing together and federating Europe's nations an States at every or almost every level – above and beyond merely economic issues, with the clear objective of asserting itself as a great power vis-à-vis its major global competitors, prime among them the United States. The Irish also endorse this idea of a close-knit Europe. In all these countries,

there is a clear awareness of the benefits gained from belonging to the Union, and of its major contribution to economic and also social development, and of the Structural Funds as the tangible evidence of Community solidarity. Support for Europe is very strong, with virtually no reservations, in Portugal and Ireland. It is tempered in the other countries by a relative disappointment that the reality of the Union does not live up to this aspiration of a unifying entity in all spheres; in Italy, there is also a tendency to keep one's distance from any kind of institution (which applies at least to the same extent with national institutions); in Spain and Greece, there is veiled frustration due to the persistence of a marked economic gap between them and the more developed countries, and also the feeling that their countries do not count for much in Europe, that they are not given the recognition they deserve, and even that their interests and opinions are somewhat neglected. The citizens of Belgium and Luxembourg are traditionally pro-Community and also have a vision of the European Union as a kind of egalitarian melting-pot, and a broad conception of its legitimate scope – in addition to the fact that they are clearly aware that, for small countries, belonging to this kind of group is an unavoidable necessity if they are to have a place on the international stage. The Finns and the Austrians also come out as largely pro-Community, both emotionally and rationally, and open to an EU with broad powers beyond the economy. The former, made less isolated by their accession to the Union, are particularly keen on contacts with the others, and their accession also gives them security against their huge neighbour with its history of dangerously protective tendencies; the latter, also sensitive to the still recent presence of the Eastern bloc on their doorstep, and also with the memory of the rifts of the Second World War still alive, value the ideal of peace and cooperation, at the same time as recognising the EU's contribution on the economic front – even though they also express concern about certain implications of accession for their country, or about its lack of clout in Community decisions. In both cases, there is also a strong awareness that it is impossible for countries of this size to remain isolated. The French and the Germans – both aware of the original political aim behind the construction of the Community (developing cooperation to avoid the risk of new wars) – also clearly support the ideal of a European integration process heading in the direction of a united Europe and a closer alignment of its countries in all spheres. The Germans have prejudices against an institution perceived as ponderous, bureaucratic, only interested in details while neglecting core issues, and financially burdensome – with the ever-present idea of Germany as a milk-cow: it is not opposed to the notion of solidarity, but believes that it is paying more than its fair share. It is also clear that the "Cresson affair" has exacerbated the Germans' suspicions about the integrity of the Community institutions in general.

In the 4 countries whose citizens have a tendency to exclude themselves from Europe, to feel little empathy for the other Europeans and to focus exclusively on their own models and values, these general attitudes translate into a strong distrust of the European Union and a desire to contain its scope for action, shows the Optem study.

It can be seen, rationally and pragmatically, that belonging to the European Union is useful for the economic interests of the country (its businesses, its exports), but in all other fields it appears to be more of a threat: interventionist, potentially undermining the national values and traditions or damaging the model of society: any "harmonisation" tends to be perceived as a downward harmonisation, to the lowest common denominator, or as contrary to the interests of the country. It is these countries that have the most widespread caricatures of the Community being only concerned with pointless, absurd, even freedom-infringing measures. The Swedes appear to be a little less virulent in their criticisms.



Source: Eurobarometer 61/spring 2004

At the beginning of 2004, support of EU15 citizens for their country's membership of the European Union (48%) remains constant, whereas neutral responses ('neither a good nor a bad thing') have fallen very slightly (29%, -2). Opposition, which is still quite low, has increased by two points to reach 17%, a record level already reached in 1981 and in 1996. Luxembourgers (75%), followed by the Greeks and the Irish (71% each) are the nations where respondents are most positive about their country's membership of the EU, while the British (29%) and Austrians (30%) are the least enthusiastic. A third of Swedes see their country's membership as 'a bad thing'. The Austrians (36%), French and Germans (35% each) are most likely to view their country's membership as 'neither a good nor a bad thing'.

Feeling European in the Candidate Countries (10 Former Candidate Countries, Romania and Bulgaria)

In the candidate countries, the Optem study revealed that some Estonians and also some Czechs have a similar stance, restricting the Europe for which they feel an affinity to the most highly developed, most organised countries of the Northwest of the continent – even if they also strongly assert their awareness of both historical and cultural values and the contrast between Europe as a whole and the US. The Latvians questioned seemed rather to be more introspective, but this may be for reasons linked to their feeling of great vulnerability. The countries in the first group, which make up by far the majority, are roughly those which, over the course of their history, have belonged to larger entities in which they mixed with others: the Roman or Byzantine Empires, the Holy Roman Empire, the Habsburg Empire, and even the Napoleonic Empire by virtue of the influence it has had on legal systems in spite of being short-lived and autocratic. Furthermore, the countries in the second group are characterised by the predominance of strict Protestant values, whereas the others are imbued, at least in part, with a culture rooted in Catholicism (or Orthodoxy).

Image of the European Union in the Candidate Countries and the New Member States

The citizens of the countries (including the 10 new member states, Romania and Bulgaria) have had a broader, and fairly clear, view of what the European Union is and what it aims to do, as shown by the Optem study. It seemed to most to be a union in the strongest sense of the word, both economic and political (and, from now on or at least potentially, military), with the aim of mutual strengthening in a whole array of fields, by developing cooperation and

putting in place common rules, and affirming Europe as a power in the world. Implicitly, or even sometimes very explicitly (such as in Slovenia, where people are familiar with the concept), the EU is indeed perceived as a federal grouping or one with federal aspirations. The citizens of four of the former candidate countries, however, tend to have a more restrictive vision of it, more limited to the economy and less imbued with an ideal. This is the case for the Czechs (who are not unaware of the larger scale of the general plan, but who believe they can observe a marked gap between it and reality, and who sometimes express criticisms of the German type), the Estonians (who are somewhat Scandinavian in their sensibilities), the Latvians (who are very caught up in their fears and whose attention is focused on the economic problems afflicting their country), and the Poles (who aspire to a Europe with a broad scope of action, but who see it primarily as a club of rich countries looking to mutually reinforce each other and among whom they are afraid of always being the poor relations, ignored or looked down on).

Attitudes towards the European Union appeared to be the most open in Slovenia (where people already feel close to it), Romania (where accession is seen by everyone as a historical necessity, an opportunity and a pressing obligation), than in Cyprus, Hungary and the Slovak Republic. The Czechs were not against it, but they had a more pragmatic approach, as do the Estonians. Generally, attitudes were most positive (or least hedged about with questions and doubts) in the most dynamic categories of the population (the middle or upper social strata, the youngest, the best educated), but there are exceptions to this general rule.

Knowledge About the European Union and the Enlargement Process

Member States (15)

Just before the enlargement, the Eurobarometer[3] revealed that 29% of the citizens said they felt very well informed or well informed about the enlargement of the European Union. This represents an increase of five points compared with Spring 2003. This sentiment is increasing in eleven of the fifteen Member States and it is particularly noticeable in Italy (+10), Ireland and the United Kingdom (both +9), as well as in the Netherlands and Sweden (both +8). The situation remained unchanged in Austria, but saw a small drop in three countries: Denmark (-6), Finland (-5) and Luxembourg (-4).

In spite of this improvement, the feeling of not being very well informed or not at all informed is shared by at least one person in two, in twelve of the fifteen Member States. In Luxembourg, although the number of people feeling badly informed does not reach the 50% mark, this feeling is held by the majority. At the same time, in Austria, there are just as many respondents feeling well informed as there are feeling badly informed. However, in Finland, more than one citizen in two feels well informed. As was the case a year ago, people who feel they are well or very well informed tend most often to be men, managers, self-employed or white-collar workers and this feeling is all the more marked when the latter respondents' fulltime education is finished.

At the beginning of 2004, 92% of EU-15 citizens had already heard of the European Parliament, 80% had heard of the European Commission, 74% of the European Central Bank, 73% of the European Court of Justice, 65% of the EU Council of Ministers and 51% of the European Court of Auditors. On the other hand, awareness of the EU's Economic and Social Committee, the European Ombudsman and the Committee of the Regions is still low (37%, 34% and 29% respectively). In comparison with autumn 2003, levels of awareness have all risen by one point, and even by two points in the case of the Economic and Social Committee. However, there are two exceptions: awareness of the European Commission and the European Ombudsman have fallen by one point.

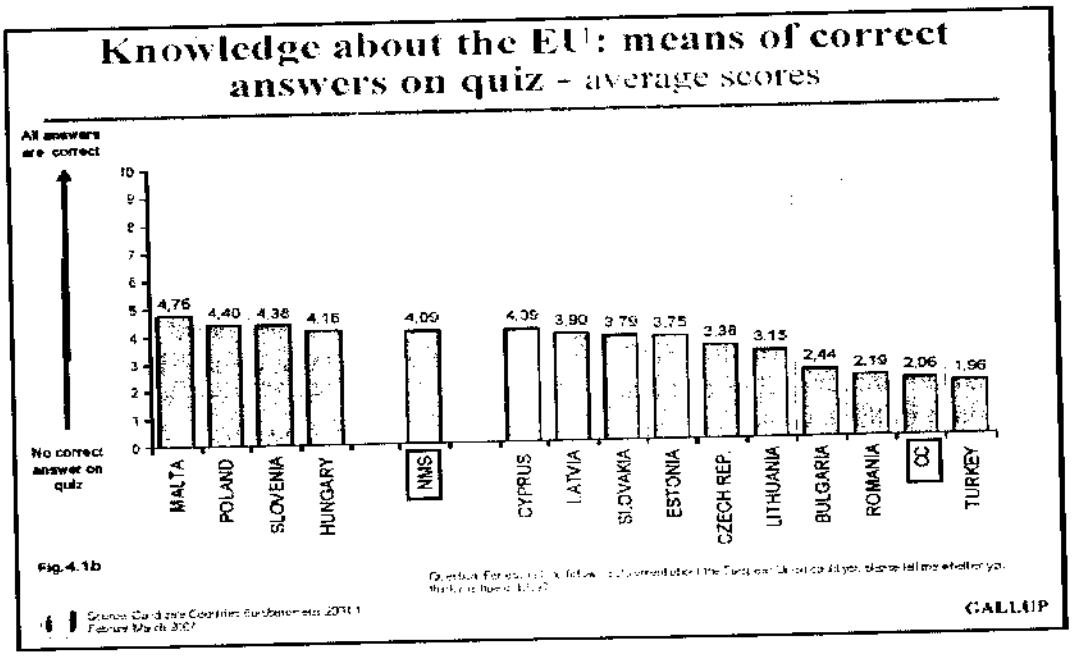
New Member States and Candidate Countries

Attitudinal analysis shows that respondents who consider their country's EU membership to be a good thing are a bit more likely to feel they are well or very well informed (37%, +5) than those who consider their country's EU membership to be a bad thing (27%, +7) or neither a good nor a bad thing (23%, +5). It should be noted that, compared with the previous time these data were collected, the figures have increased for each one of these categories.

As regards the perceived knowledge, the comparative results show that a quarter (25%) of the accession country citizens feel they know "quite a lot" to "a great deal" (i.e., those choosing the numbers 6 through 10 on the scale) about the European Union. This is highly stable compared to autumn 2003 (26%). The perceived knowledge of the previous member states is higher than that of the NMS, where 30% of the citizens mention they have quite a lot to a great deal information on the European Union.

In the former candidate countries and in Romania and Bulgaria, the citizens are increasingly but still surprisingly poorly informed about some very basic facts of the European Union. The most widely known trivia-fact is what the European flag looks like; 87% of the new member countries citizens and 58% of the CC countries can recognize it. It is an interesting development that such trivia knowledge is now sometimes higher in the new EU member countries than in the EU 15 zone, the flag is an example: in the previous member states fewer citizens (81%) think that the EU flag is blue with yellow stars.

The new EU member countries' population, on average, gives 4.09 (4.74 in autumn 2003) correct answers to the 10 statements, but in the CC countries 2.06 is the mean of correct answers (2.83 in Autumn 2003). The Maltese (4.76), Polish (4.40) and Slovenians (4.38) give the most correct answers, and the Turkish (1.96), Romanians (2.19) and Bulgarians (2.44) give the fewest ones to some basic questions.



Source: Eurobarometer 61/2004.1

Knowledge about the enlargement process

In spring 2004, candidate Countries Eurobarometer finds that the majority of people in the accession and candidate region – just ahead of the historic event – are still very poorly informed about the enlargement process. Nonetheless, at the time of the fieldwork, there were 3-4 months left to go until the enlargement of the European Union in May 2004. There are more citizens in all new EU member countries feeling well and very well informed about their own country accession process than feel the same about the general

enlargement process – but there are big differences among the countries. In the Czech Republic (+3), Hungary (+4), Poland (+4) and Slovakia (+4) only slightly more citizens said so, but vastly more people would agree in Estonia (+27), Lithuania (+24) and Latvia (+17).

Table 6.6 Feeling very well and well informed about enlargement of [COUNTRY] and of the European Union

	COUNTRY's accession	EU enlargement	Net difference
CZECH REP.	35	32	3
HUNGARY	35	31	4
POLAND	45	41	4
SLOVAKIA	37	33	4
NMS	44	38	6
SLOVENIA	62	55	7
MALTA	55	46	9
CYPRUS	58	43	15
LATVIA	56	39	17
LITHUANIA	66	42	24
ESTONIA	59	32	27

Source: Eurobarometer 61/2004.1

The traditional media are the sources most likely to be used by the public, but other sources also have to be mentioned, e.g. discussions with relatives, friends, Internet, brochures, meetings, etc.

The European Union Enlargement – Public Opinion Perception

Member States

2001-2002

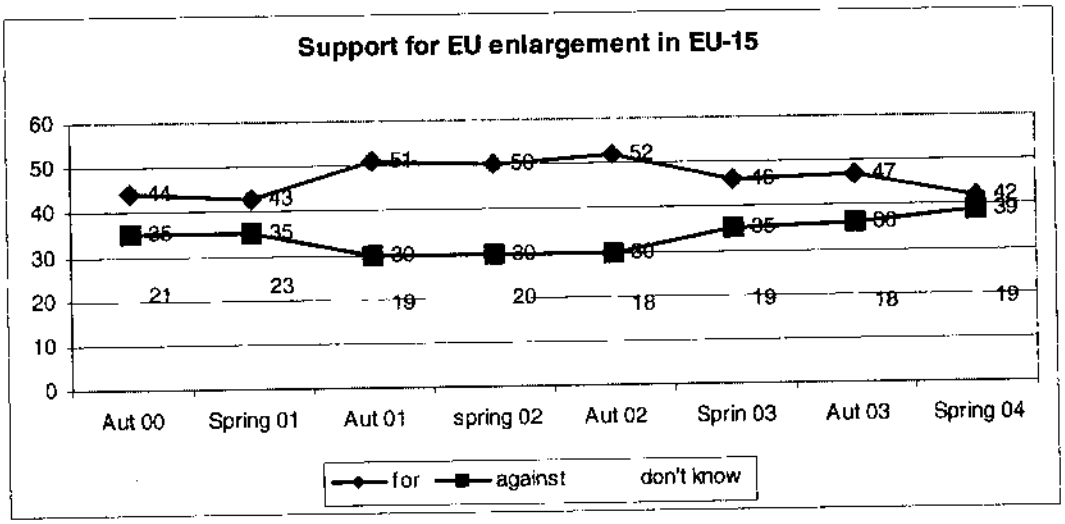
According to the OPTEM study, in the Member States, attitudes towards enlargement were directly linked to general attitudes towards Europe and the feeling of Europeanness analysed in Chapter II of the general report. In most "Southern" countries, the legitimacy of the candidate countries' accession is not contested, and it is felt most strongly in the countries of the geographical South which are least economically developed and which show particular empathy and solidarity with the candidate countries, whose difficulties they understand better by virtue of going through or having gone through the same difficulties themselves. While the citizens of these countries would probably not be prepared to accept the Structural Funds, which they receive, being completely cut or drastically reduced, they at least spontaneously declare themselves willing to participate in the common effort to help the newcomers. Naturally, the arrival of new Member States also arouses real concerns, for the country and, collectively, for the Union (there are sometimes fears that it will become "unmanageable") – but there is also a sense that there will be benefits at national and Community level.

The citizens of the "North"– the Dutch, Danes and Swedes – are particularly resistant to enlargement, which they oppose or accept as inevitable only reluctantly, seeing almost exclusively negative effects for themselves; many of them are clearly impervious to considerations of solidarity beyond their own borders. The British are no more willing either to "pay" for future members, towards whom they are rather indifferent.

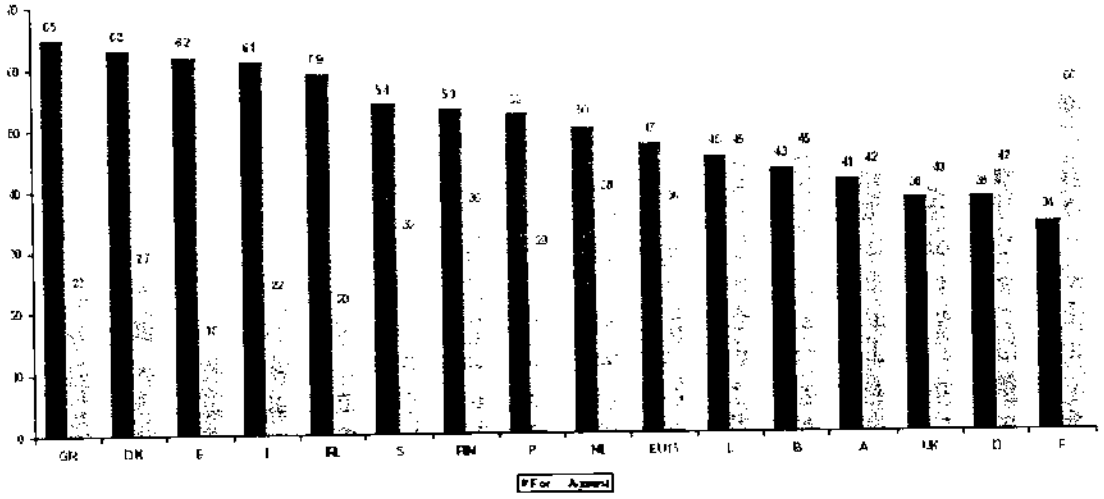
2002-2003

The Eurobarometers showed, in October 2002[4], that 50% of the EU member states citizens were supporting the enlargement process. 53% were considering that the enlargement was a guarantee of peace and security in Europe and contributed to an increased role of the Union at the global level. 21% feel uninformed about this process. Most of them, 65%, were considering that, after enlargement, the decision making process was to become more difficult. In December 2003, 47% supported the enlargement, while 36% were against this process. The enlargement support increased in Belgium (+5%), Finland (+3%), Spain, Italy, Netherlands, Great Britain (+2%) and decreased in Portugal (-8%), Greece (-6%), Germany (-4%).

At the beginning of 2004, when the largest enlargement in the European Union's history was looming on the horizon, a relative majority of EU15 citizens claimed that they supported it: 42% favoured the membership of the ten new countries, while 39% opposed it.



Support for enlargement (by country)



Support for enlargement in member states, by country
Source: Eurobarometer 60, public opinion in the European Union

Public perception concerning EU accession in the 10 new member states (before accession), Romania and Bulgaria

2001-2002

Of the countries with which accession negotiations were started earliest, the Slovenes appeared to be very much in favour, in spite of reservations in the oldest and least dynamic section of the population; broadly, the same can be said of Cyprus, and, with more pragmatic and less emotional considerations, in the Czech Republic and Estonia; the Hungarians certainly see accession as a necessity, which generates great hopes as well as strong fears; as for the Poles, the fears clearly prevail over the hopes, which their very great pessimism somehow prevents them from expressing. They fear of being mistrusted as EU members, comparing with the citizens of the founding member states.

Among the countries with which negotiations have been started more recently, there is a huge contrast between the Romanians, who are unanimously enthusiastic at the prospect of joining the European "family" (even though they foresee serious difficulties, given the decay and disorganisation of their country), the Slovaks, who have contrasting attitudes, but with hardly any radical opposition to accession, and the Latvians, who are particularly anxious about its consequences for their country, which is economically very vulnerable, and, particularly, about maintaining the country's capacity to take decisions autonomously – though not about the risk of threats of force (the word "Union" sometimes conjures up the spectre of the Soviet Union): it is only with great reservations that a majority seem to accept joining the European Union as inevitable.

2002-2003

The EU accession support was constant during 2002-2003, varying between 59% and 64%.

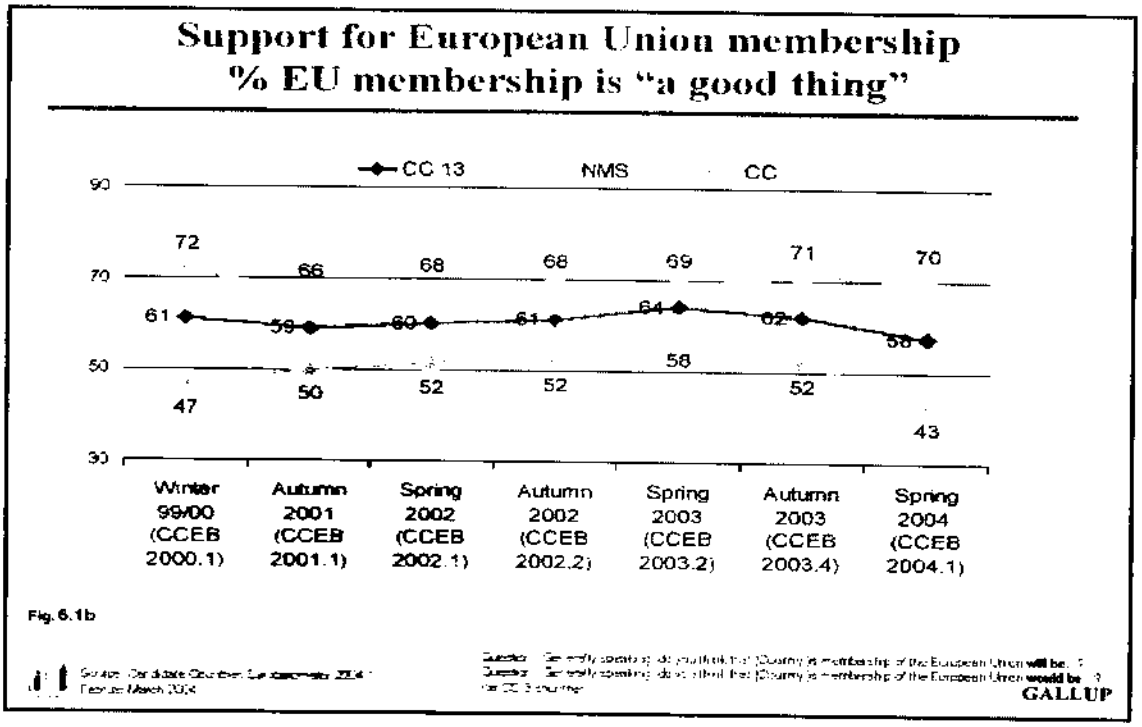


Fig. 6.1b

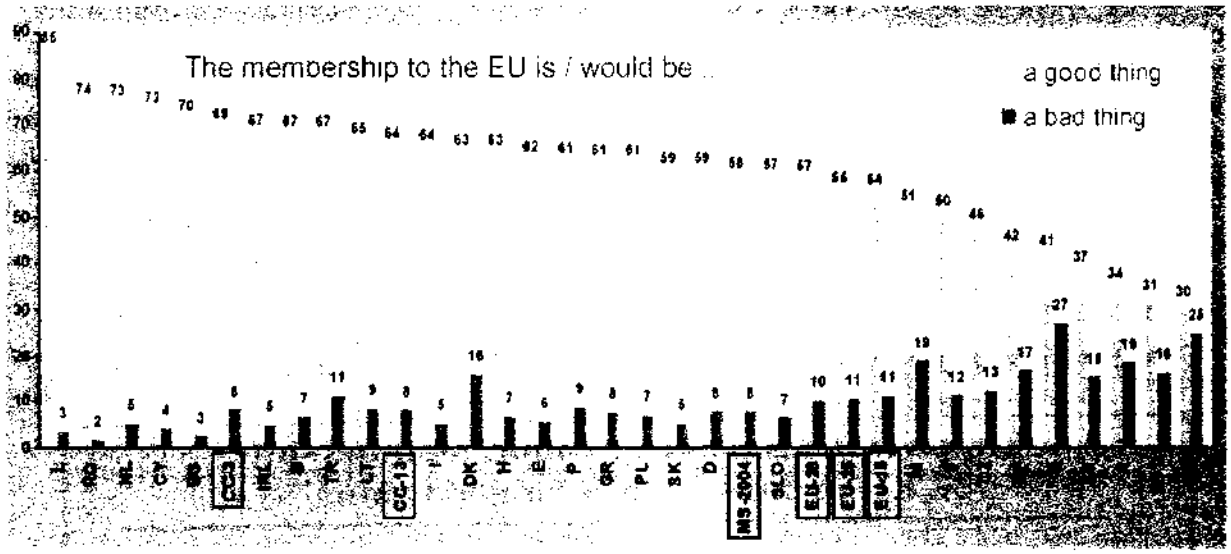
Source: Eurobarometer 61/spring 2004

In 2002-2003 the trust in EU institution was bigger than the trust in national institutions, according to the Eurobarometer published in December 2003[5]. 52% considered that the EU accession was a positive fact and 12% considered it as a negative one. 40% considered that EU accession would bring advantages.

2003-2004 - referenda

The referenda organized in the former candidate countries proved the support of the public opinion for the EU accession. In Czech Republic, 77% of population voted for and 23% against, in Estonia, 67% for and 33% against, Hungary – 84% for and 16% against, Latvia, 67% for and 325 against, Lithuania, 90% for and 9% against, Malta – 53% for and 46% against, Poland – 77 % for and 23% against, **Slovakia** – 92% for and 6% against, Slovenia – **90%** for and 10% against. Cyprus did not organize a referendum, but has a public support for the EU accession of 84% and 8% against, according to an Eurobarometer.

Currently, 49% of the EU 25 citizens consider that the EU member status is a positive fact[6].



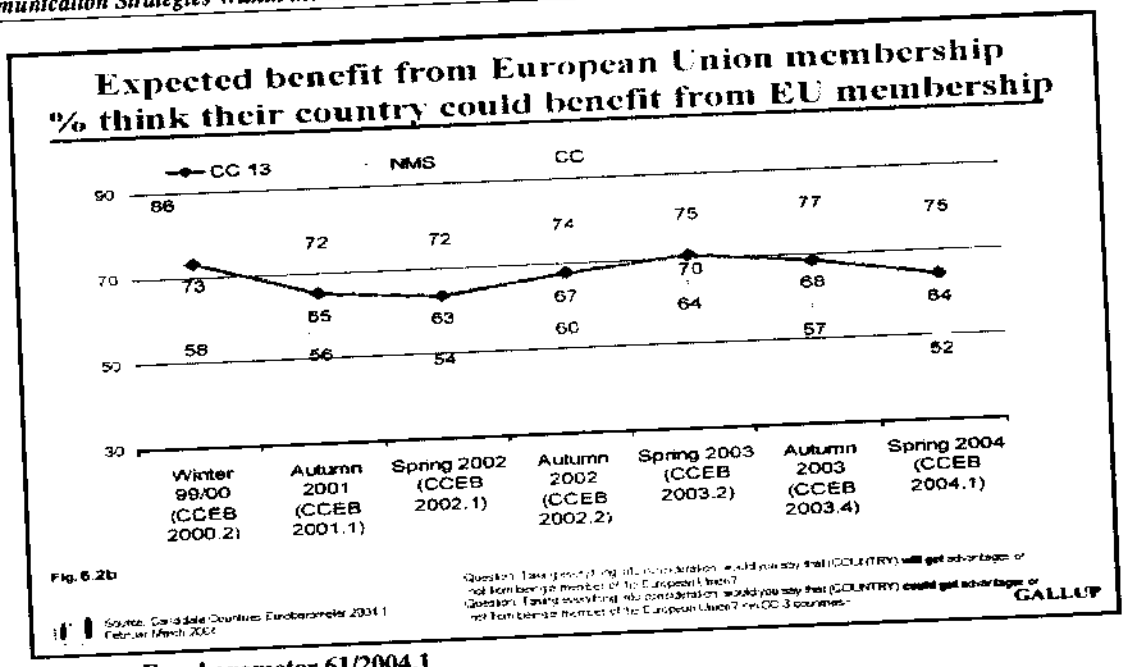
Source: Eurobarometer EB 60 – CC-EB 2003.4

Table 1. Support for EU membership (% by country)

Question EB59: Generally speaking, do you think that (OUR COUNTRY)'s membership of the European Union is ?
Question CCEB 2003.2: Generally speaking, do you think that (COUNTRY)'s membership of the European Union would be... ? (READ OUT)

	EU-28[1]	EU-25[2]	EU-15[3]	CC-13[4]	MS-2004[5]	CC-3[6]	B	DK	D	GR	I	E	F	IRL	L	NL	P
a good thing	57	55	54	64	58	69	57	63	56	61	64	62	50	67	85	73	61
a bad thing	10	11	11	8	8	8	7	16	8	5	5	6	12	5	3	5	9
neither good nor bad	25	27	27	19	28	15	30	17	26	29	22	27	34	16	11	18	24
DK / NA	8	8	7	8	6	8	6	4	8	5	9	6	5	12	1	3	6
TOTAL	100	101	99	99	100	100	100	100	101	100	100	101	101	100	100	99	100
	UK	SF	S	A	BG	CY	CZ	EST	H	LV	LT	M	PL	RO	SK	SLO	TR
a good thing	30	42	41	34	70	72	46	31	63	37	65	51	61	74	59	52	67
a bad thing	25	17	27	19	5	4	13	16	7	15	9	19	7	2	5	7	11
neither good nor bad	31	36	30	41	17	21	32	42	23	40	23	24	23	15	30	33	14
DK / NA	14	4	2	6	10	3	9	11	8	8	3	6	9	10	6	8	8
TOTAL	100	99	100	100	100	100	100	100	101	100	100	100	100	101	100	100	100

Source: Eurobarometer EB 60 – CC-EB 2003.2



Source: Eurobarometer 61/2004.1

Expectations of Information on the European Union

The Optem study has shown a need for information, which is strongly and spontaneously expressed by many citizens in the candidate countries, and that the citizens of the Member States have expectations which are not so strong until their attention is drawn to the fields of EU activity, which they (in some countries at least) initially perceive as abstract and remote, and which there is less of an active demand to know more about. In these countries (broadly speaking, the least Europhile ones or those in which the Union's image is the least positive), expectations do nonetheless develop from the point at which their interest is piqued by being made to feel that what the EU does concerns them.

As far as the content of the information is concerned, it is expected to: inform and give a sense of how Community activities concern the country and the individual in his or her daily life and to furnish people with a better general knowledge of EU affairs, its plans, activities, decisions and workings.

As far as the form and tone of the communication is concerned, there is a very broad consensus rejecting anything dry, boring or written in technocratic jargon or "officialese", and in favour of lively presentations which involve as well as explain, and appeal to the emotions as well as to reason.

Regarding possible channels and relays for information on the EU: the interviewees mentioned the media first and foremost; the Internet as a way of accessing information was mentioned by a substantial minority; people often spontaneously suggest that children should be "immersed" in Europe and the European Union at school; people would in fact be in favour of local, open debates in which they could participate. Interesting, national political figures were often automatically discredited. The idea of information being presented by a European Commissioner was, in spite of some lingering reservations, received much more favourably – which confirms the Commission's potential credibility.

Communication Strategies of the European Union Concerning the Enlargement Process

The first communication strategy of the European Union was elaborated by the European Commission in 2000 and was to be implemented in the Member states and candidate countries by the EC Delegation and Representations.

A communication strategy was necessary in the member states to legitimise the Parliament

action to ratify the Accession Treaty and, in the candidate countries, in was necessary to have a positive result in referenda.

In the **member states,** the strategy had three key objectives:

- to communicate the reasons for enlargement to the public including its likely impact and the challenges it poses. The outcome should be improved understanding of the enlargement process, which in turn should assuage apprehensions about its impact.
- to promote dialogue at all levels of society between policy-makers and the public on issues related to enlargement. This should ensure that progress through the negotiations towards enlargement is accompanied by public understanding and support; and
- to provide information about the candidate countries to help promote general understanding.

In the **candidate countries**, the key objectives were:

- to improve public knowledge and understanding of the European Union;
- to explain the implications of accession for each country;
- to explain the link between the pace of preparations for membership and the progress of the negotiations. This should encourage the acceleration of the transposition of EU laws and the creation of the necessary administrative structures. It will also increase public understanding of the reasons why negotiations may proceed at different speeds in different candidate countries.

The content of messages:

For member states:

- The reasons why the EU has undertaken a new round of enlargement;
- The enlargement process (negotiations, preparations in the EU and in the candidate countries);
- The relationship between enlargement and the strengthening of the EU (institutional reform, financial perspectives etc.);
- The impact of enlargement on different segments of the population and sectors of the economy; the candidate countries, their geographic location, recent history and profiles.

For candidate countries:

- The objectives and nature of the EU, its reasons for existing, its policies and activities, its openness to new members and its previous enlargements;
- The impact of accession and its significance for the citizens;
- EU support programmes for candidate countries, notably PHARE, SAPARD, ISPA and, where applicable, MEDA;
- The relationship between legal/ administrative preparations for membership and the conclusion of the accession negotiations.

In third countries delegations should include enlargement among the priorities of their information and communication activities.

The EC strategy has addressed the general public by means of a decentralised approach, adapted to the specific requirements of individual countries, regions, localities and sectors. The Commission services in Brussels are mainly responsible for generating information on enlargement as well as core messages, which are universally applicable. However the offices of the Commission and of the European Parliament in the member states and the Commission delegations in candidate countries would work in close cooperation with governments, existing information centres and other local partners to adapt this information to their country's specific communications requirements. Opinion leaders in the member states and the candidate countries (government ministers, members of the European Parliament and of national parliaments, television and press, interest groups, teachers, civil society organisations) would have the main responsibility for generating informed discussion on enlargement. The communications strategy would address or involve: political institutions (The European Parliament and other European institutions, governments, parliaments

and regional assemblies), business and industry (business leaders, trade unions, professional associations), civil society (non-governmental organisations, religious and intellectual bodies, universities, teachers in secondary and higher education), etc.

The communication strategy has established a number of guidelines for developing the communication strategies:

Information

- Electronic media – the essential means for transmitting information. These are more efficient and less costly than traditional instruments (pamphlets, publications etc.). Commission websites that deal with enlargement were to be extended, made more user-friendly and interactive and updated regularly. A team of Commission experts, with the necessary professional support, were to be on stand-by for rapid response to questions.
- The Internet server EUROPA, the TV service "Europe by Satellite" and the question and answer service EUROPE DIRECT were to be given a major enlargement focus. The availability of these services was going to be widely publicised.
- The existing Phare-Tacis Information Centre in Brussels was to provide information about enlargement.
- TAIEX would provide specialised information in candidate countries about the acquis and its transposition.

Communication

- Enlargement would become a central component of the Commission's communication activities, taken into account as part of the communication and information activities of all Commission services.
- The Commission president and other Commissioners should regularly include enlargement themes in their public statements. Close coordination was necessary in order to ensure a coherent approach. With this aim in view, the Commissioner responsible for enlargement will ensure that members of the college dispose of the necessary elements. DG Enlargement's Information Unit will provide back-up. Such activities should be undertaken in cooperation notably with the Commissioners responsible for relations with the European Parliament and for Education and Culture.
- Commission representations and EP offices in the member states and Commission delegations in the candidate countries would develop their communications activities in conjunction with relevant governmental and non-governmental bodies.
- The media, in particular TV and radio, are of crucial importance in conveying key messages. Fast and easy access by the media to Commission and other EU institution sources is therefore essential. Senior Commission representatives and spokespeople should be available to the media at all times.
- Dialogue would be promoted with opinion leaders and public speakers, building on the experience with the Dialogue on Europe. The Commission's representation offices and EP offices in the member states and Commission delegations in the candidate countries, together with local partners were to develop supporting material.
- The ECVP and other visitor's programmes for journalists, officials, teachers and regional politicians were to be expanded, in cooperation and coordination with the European Parliament.

Communication Strategies Concerning the Enlargement

Also, the member states and candidate countries developed different communication strategies, following the European Commission guidelines.

For the member states, the key objectives have been: to increase the interest concerning the enlargement; to increase the understanding of the enlargement process, the knowledge about the candidate countries, to eliminate the pre-conceptions 'we' and 'them', to calm the fears concerning the unemployment, trafficking in human beings and drugs, illegal migration, etc.

Most of the candidate countries launched a communication campaign in 1998, 1999 or 2000 or later (Romania and Bulgaria – 2000, 2001). Their target groups have been: the

public opinion, farmers, young people, workers, parents, housewives, trade unions, business associations, business men and women, NGOs etc.

Main actions developed in the member states and candidate countries, having a positive effect were:

- Working with schools and children: effective because it engages "the future citizen", but also because by involving the child (e.g. in course work, events or quizzes/ competitions) EU was hoping to involve the whole family, thereby reaching public audiences that are often otherwise removed from political/EU affairs
- Regional networks are one of their most successful and effective information activities.
- Importance of relations with "informal" networks – NGOs, national/regional government bodies etc. Particularly in big, diverse countries, action needs to be at regional level.
- Training and trips for journalists have paid big dividends, in terms of improved media coverage, both qualitatively and quantitatively
- Cooperation of the Member states with the former candidate countries and candidate countries – useful, for improving the information and increasing understanding and sympathy
- Actions involving the diplomatic missions and organisations in the former candidate countries
- Eurobuses (Estonia, Lithuania, Poland, Slovenia etc.) itinerant exhibitions – effective especially during the pre-referendum period
- Importance of "face-to-face" contact with rural audiences, in particular farmers – can be extended to many other sectors.
- Cultural events are an excellent way of overcoming "them and us" attitudes on both sides of the equation
- "Europlus" game is very popular among children
- Developing business links between Member state businessmen and potential partners in former candidates /candidates
- Training of the locally elected municipality leaders to realize and seize the opportunities of the enlargement for their respective regions, project developed by Sweden, has proved to be successful and could be extended
- Sport is always an excellent vehicle for creating cross-national and cross-cultural sympathy and understanding (football in particular); the cyclist tour to Brussels, organised involving Polish farmers, was a success
- Audio-visual projects – very good coverage
- Quiz concerning the EU accession
- Distribution information by the national post

Case studies:

Germany

The communication campaign was implemented by the European Commission representation, in cooperation with the federal government and land authorities and civil society. The main characteristics of this communication campaign were: a working group concerning the EU enlargement, implementing the campaign in cooperation with the Chambers of commerce and trade unions from Germany, extending the communication activities at the local level, coordinating messages. The main arguments used, in order to increase the motivations and to decrease the psychological fears were: political – democracy, state of law; economic – free market of 500 consumers; labour market – unfounded fears concerning the unemployment (the European Commission obtained transitional periods for the new member states); as regards the Common Agricultural Policy, the enlargement is the moment to operate the necessary reforms.

The messages were based on a win-win approach: contribution to re-unifying Europe, new chances for economic and social development of Europe, bringing advantages for Germany, a country concentrated on external trade, benefits concerning the social security, state of law and environment; the enlargement is

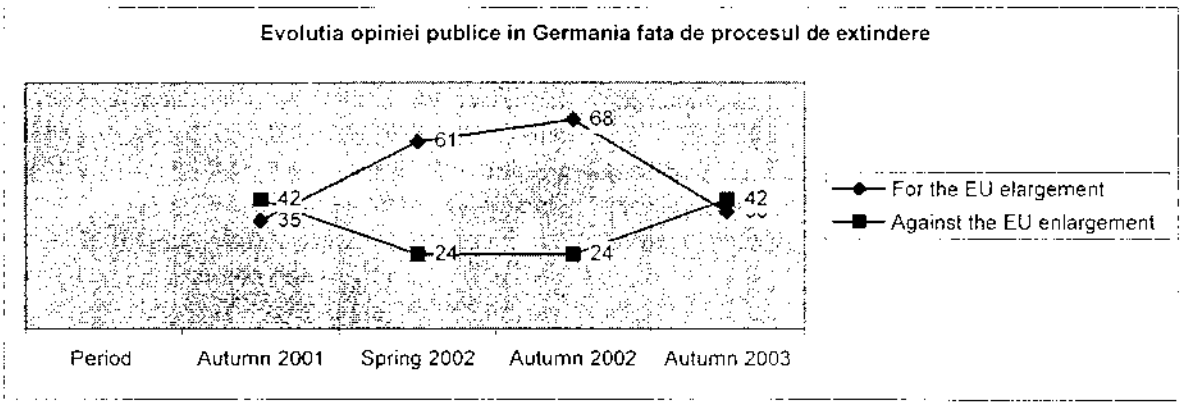
a challenge. Those messages were oriented towards the public opinion and opinion leaders.

The number of actions concerning the enlargement increased in the second part of 2002 and 2003, when the national parliaments ratified the Accession Treaty.

The actions for communicating the enlargement were focused on: organising debates, conferences, roundtables, information documents and materials (brochures, CD-ROMs, etc.), journalists visits in the candidate countries, spectacles concerning the candidate countries customs (at the Poland border), information centres, discussions with elites and politicians from the candidate countries, advertisement in the regional press, multi-media games, road-shows, cultural activities with the candidate countries, etc. The European Commission Delegation promoted a direct dialogue in schools between politicians and children, very effective.

The Public Opinion in Germany and the EU Enlargement

For German citizens, the European Union is, besides the economic aspects, an opportunity to express the attachment for the free world, the only one capable to assure the peace and stability[7]. The German citizens are more tolerant towards the enlargement and have a collective guilt because of the World War II, which produced the partition of Europe. The number of enlargement supported decreased by the accession data, despite the communication campaign. The support for EU enlargement was 35% in autumn 2001, 61% in spring 2002, 68% in autumn 2002 and decreased to 38% at the end of 2003, while the opponents increased.



This situation could be explained by the fears for the migration from new member states (Poland). On the other side, Germans are not in favour of a bigger contribution to the EU budget, considering the economic problems of Germany.

Another explanation is that the communication strategy was directed mostly to the elites (academia, NGOs, business etc.), not to the common people, the most reluctant (ex. workers). The television, having a good exposure to the public, was not used in the communication campaign, using especially the newspapers, where the enlargement theme was not systematically presented. On the other side, the defavourable political and economical internal climate contributed to this reluctant attitude.

Poland

The communication Strategy of Poland was initiated in 1996, by a law that set up a Committee for European Integration and a Department for Social Communication and European Integration. The first communication strategy was elaborated in 1999, for 4 years, having a budget of 4 million zlots (1 million euro). For the 2003 referendum campaign, the budget was bigger.

The campaign concentrated on 3 phases:

1. During the negotiation process, the objectives were to consult the society on the negotiations, to present the Poland position, to inform about the negotiations process.
2. Before the referendum on EU accession: objectives were to present the results and conditions of EU accession, to continue the social debate concerning the future member state, to encourage the citizens to participate to the referendum.
3. Before the EU accession, having as objectives: to disseminate information concerning the EU functioning, to prepare the economy to cope with the competitive market of the EU, to prepare the participating to the European Parliament elections.

The main target groups were: general public, politicians, public servants, public administration, mass-media, business community (SMEs), farmers, teachers, students, church and religious associations, trade unions, public organisations, associations etc.

Poland relied also on multipliers, persons having the necessary expertise concerning the EU policies: public administration representatives, entrepreneurs, farmers etc. The implementation of the communication strategy was realised in cooperation with NGOs (financially supported by the Government), local public administration, specific associations etc. The Government in cooperation with the civil society tailored information.

Several information centres were set up at the voievodships level, through the cooperation between the Government and the NGOs. Since 1999, 35 regional centres, run by NGOs (foundations, associations, universities, regional development agencies etc.) and 300 village centres offer and distribute European information, organise conferences, implement European programmes, offer access to libraries etc. Their quality is not equal and depends on the owner. There are also other information centres that can offer European information.

Poland paid increased attention to the rural area, due to the force of the farmers' representatives at the political level and within the civil society. Poland set up 35 agricultural information centres, 340 agricultural services, and 10 rural development centres offering consultancy. Also, there were organized more than 400 trainings for almost 10.000 farmers, brochures were printed, etc. A bicycle race, from Warsaw-Germany-Netherlands-Brussels, with young Poland farmers was organised by the presidency.

For the media, the Government organised training seminar "understanding negotiations", visits to Strasbourg, Brussels, press meeting (formal and informal). The Government allocated funds in order to organise tenders for media shows.

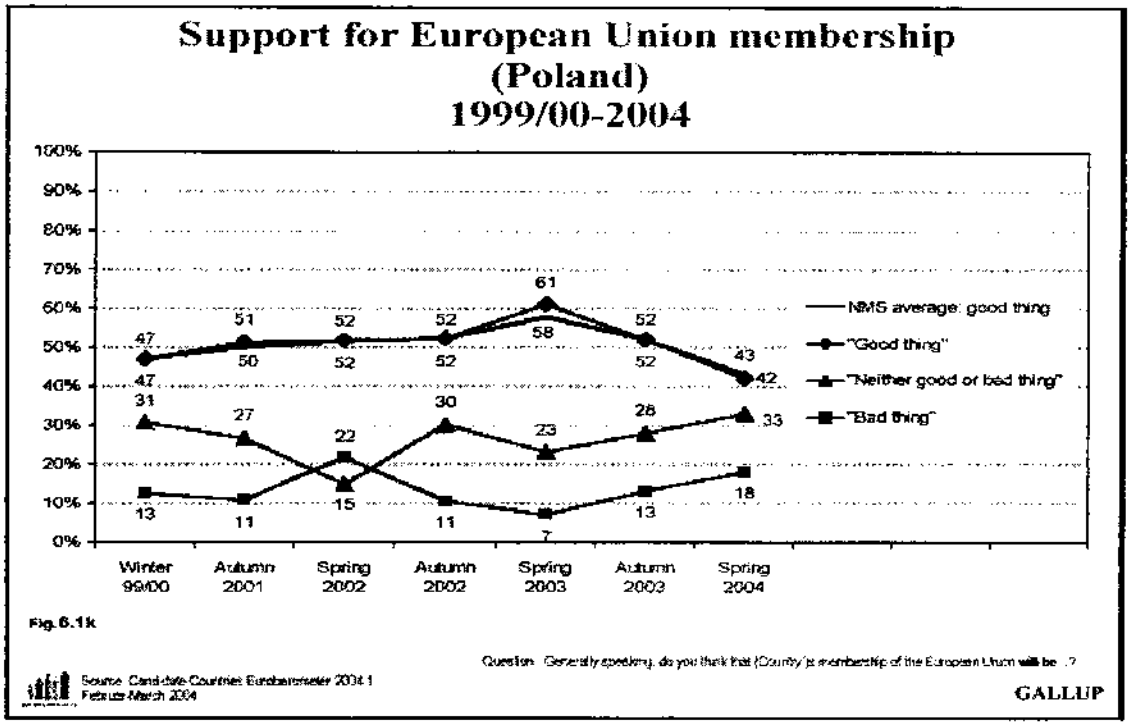
For the local authorities, the training focused on EU funds management. A special campaign for SMEs – "your company in the European Union" provided them with some information concerning the EU. For the students and pupils, the schools set up more than 4000 euro-clubs, organising different activities with European relevance. A contest for schools was organised in 2003, concerning the EU funds management and the European Parliament elections.

Another efficient target group was the Catholic Church. At the beginning, the Church wasn't very supportive (because of some political aspect– homosexuality, abortion etc.). In Malta, the success of the cooperation with the Catholic Church consisted in the non-involvement of the Church; in Poland, the Church supported the EU accession process and advised the Christians to vote for accession. The Polish Pope John Paul II had an important role in this process. Unlike in Hungary, the communication campaign focused on communication. The country dimension was a big challenge for Polish communicators.

Public opinion in Poland

Before the referendum, the public opinion had a positive attitude towards the enlargement. The farmers were the most reluctant, but after accession, they proved the biggest EU accession beneficiary. Before the referendum, the intention for vote participating was 56%.

The spring 2003 Eurobarometer showed 70% votes for, 14% against, 6% undecided, meaning a 1% decrease of EU accession supporters. The referendum result was (8 June 2003): 77% for, and 23% against, bigger than the support shown by the previous opinion polls.



Support for the EU accession. Source: Candidate countries Eurobarometer 2004.1

Conclusions:

The EU communication campaign of Poland was efficient, taking into consideration the referendum result. On the other side, one of the polish characteristics is national pride, fed by the Political class. There was a measure in order to put pressure on the accession negotiations: the Polish politicians tried to enhance the pride, in order to use the argument of internal pressure in negotiations. On the other side, the effect was the real pressure of the Polish farmers for bigger direct payments and lower rural development funds. The effect was a pressure on negotiators, with collateral effects. The Government tried to focus on European Council in Copenhagen (December 2002). On this occasion, they organised a live studio in the Government building, to transmit live this summit, in order to emphasise the struggle for obtaining the best results in negotiations.

Over the longer term, the Polish attitude in the European Union is rather negative (e.g. European Constitution) and this create some controversies and problems in an institution where negotiation and cooperation is the main rule.

Hungary

Ministry of Foreign Affairs

In Hungary, the communication concerning the EU accession was initiated in 1988, by setting up 19 information centres in the main departments of the country, having regional and local points. The Ministry of Foreign Affairs, the coordinator of the accession negotiations, asked to the local authorities to provide those information centres with space, to finance the wages of the employees (2 persons, average). The Ministry

has given training for employees, equipment (computers, Internet access), and financing for organising meetings with the citizens at the local level. The initial expensive was assured by a PHARE programme.

During the accession negotiations, the Ministry of Foreign Affairs offered EU information to the citizens through a special programme for libraries (64 libraries in the whole country), sponsored EU media programmes and organized the Europe Day, with the European Commission Delegation. Also, the Ministry edited brochures concerning the negotiations chapters, Hungary's position in negotiations etc. Also, more than 4000 journalists at the central and local level were trained and, by now, more than 300 of them are still working in the EU affairs.

Before the referendum, the Ministry gave permanently information concerning the Accession Treaty, negotiations result, costs and benefits of EU accession, by publishing brochures, direct meetings with citizens etc. In February 2003, the Ministry set up a call centre, where the Hungarian citizens could receive information concerning the EU accession. The Ministry's site is another communication tool.

Public Foundation - EUKK

The Hungarian Government set up the Foundation on December 2002, in order to lead the communication campaign concerning the EU accession. The Foundation is independent, headed by a board of directors, including power, opposition and civil society representatives. The objectives of communication campaign were: a high participation to the referendum; a positive vote for accession; transforming the referendum day into a memorable one for the citizens; obtaining the national unity in order to reach the EU accession goal; increasing the knowledge about Hungary's accession to the EU; involving NGOs and business sector into this effort; increasing the volunteer participation, in order to multiply information. In order to implement the communication strategy, the Foundation cooperated with several PR and advertisement companies; the funds spend for this campaign was 10 million eur for January-March 2003.

The main messages were: the referendum is a unique moment, an essential decision, the EU accession attenuates the internal conflicts and unifies the Hungarian citizens, connecting them to the European Union; the Hungarian nation has to take the responsibility for this decision.

The first phase of the campaign (15 February – 15 March) focused on personal involvement, with the message: "you should ask any question". In this phase, the advertisement (TV, radio, billboards etc.) focused on information having a positive answer (e.g.: can we work in EU? Yes.) The purpose of this campaign was the awareness on EU issue. 11 brochures concerning the main interest fields (working, studying in EU, agriculture, etc.) were elaborated. A huge direct marketing campaign was initiated. Almost 4 million letters were sent to Hungarian families, asking them the permit to receive those EU brochures. They were asked to choose 3 brochures. The EUKK received 500.000 replies, an important number for a direct marketing campaign.

Also, a call centre was set up, with more than 90 operators and a database of 2000 questions.

The second phase of the information campaign (15 March- 12 April- referendum day) was aiming to "inspire" and to generate a positive attitude from different target groups: the referendum is a unique moment, requiring a common effort. The message was: "we are different, but we think the same on EU accession". The advertisement focused on presenting some public figures having different attitudes, and even conflicts, but agreeing on Hungary's accession to the EU (e.g.: the chief of the police and a well known criminal). The direct marketing campaign was continuing during the second phase.

More than 1000 events for SMEs (conferences), farmers (meeting, seminars, information for the professional associations and mayors), young people (sites, games, Internet games, contests etc.) were organised, as well as caravans, road shows, daily press conferences etc. The women magazines published special pages concerning the women's life in EU etc.

The European Commission Delegation

The European Commission Delegation had an information centre in Budapest. The ECD realised several actions to train the journalists, including in Brussels. The PHARE, ISPA and SAPARD programmes were communicated to the public. The European Commission Delegation had several meetings with farmers, workers, young people etc.

Political parties

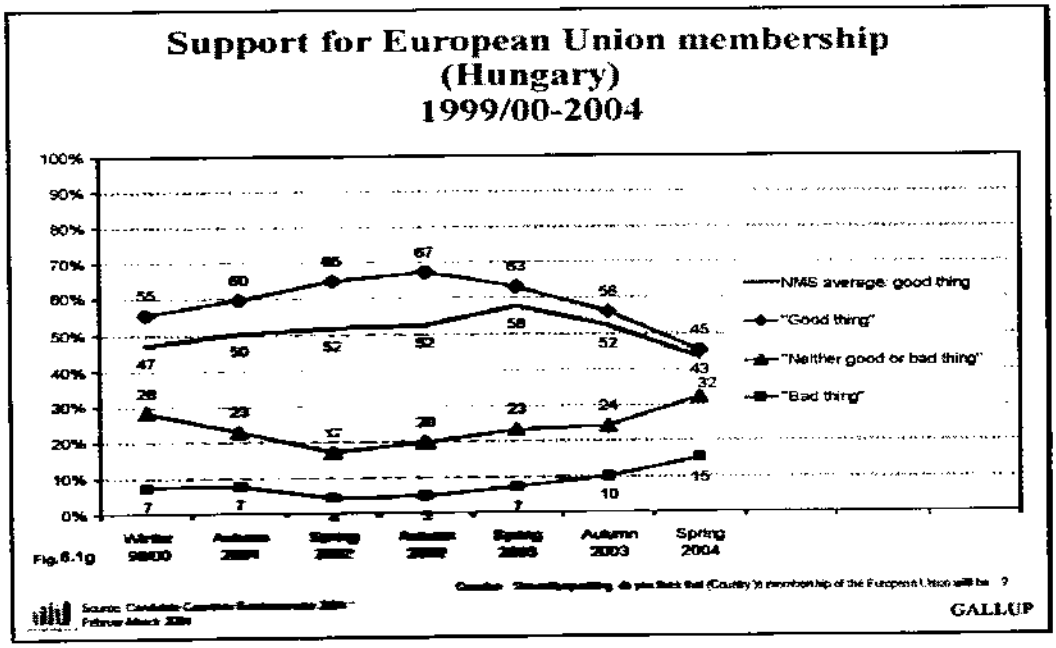
The interest of the Hungarian media for the EU issue was rather low by December 2002. The opposition exploited the European Council in Copenhagen (December 2002) to show the weakness of the Hungarian government in negotiating the accession (especially agriculture).

The Hungarian politicians did not have homogenous positions towards the EU accession (Eva Ring[8]). FIDESZ lost the elections in May 2002 and considered that this result was a consequence of Brussels' critics. FIDESZ had good relations with Franjo Tudjman, with the extreme right leader Jorg Haider, adopted the Hungarian Law, determining vivid reactions of the European Union. Several foreign companies were closed and FIDESZ accused the foreign managers for that. FIDESZ found an ally in an extremist party (the Party of Justice).

Nevertheless, the polls were showing that the Hungarians consider the EU accession advantages bigger than costs. As a consequence, Viktor Orban stepped back, recognising that the EU accession offer something. As a result, the number of EU accession supporters increased.

Public opinion

Since 1996, the opinion polls indicated that the Hungarian population is in favour of EU accession (61% in 2001, 67% in October 2002, and 56% after the European Council in Copenhagen, the lowest support rate from the beginning of the accession negotiations). After negotiations, some problems were raised concerning the prices and Hungarian competitiveness on the EU market). On October 2002, Szonda Ipsos Institute[9] revealed that 67% of Hungarians would vote for accession in a referendum. Median institute revealed a high rate of absenteeism (275 wouldn't go to vote and 17% undecided[10]). In January 2003, the participation intention increased to 64%. The EU accession supporters are young (50%), middle class (55%), and young elite (52%). The biggest advantages from EU accession are perceived for experts, politicians and the biggest costs, for rural and old population. The eurobarometers showed a support fluctuation between 555 and 67%.



Source: candidate countries Eurobarometer, 2004.1

At the referendum, on April 12, 2003, the participation rate was 45,6% (the Hungarian law requires 25% to validate the referendum) and 83,76% for the EU accession, much more than indicated by opinion polls.

Conclusions:

Despite the yes vote, the overall result was rather bad, because of the low participation rate. Nevertheless, the favourable vote was high, taking into consideration the results of the previous opinion polls (67% for).

The main problems were:

- After the European Council in Athens (broadcast by all the televisions), the citizens had sensation that the EU accession is a solved problem and the referendum is only a formality.
- The opposition did not cooperate and had an ambiguous discourse till the end (we are not against the accession, we are still thinking ...)
- There was little dialogue with Hungary's accession opponents
- The referendum was organised on Saturday- working day (in other candidate countries, like Poland, the referendum was organized on Saturday and Sunday)

Communication campaign

- Too much accent on publicity, underestimating the communication (the European Union was sold as a "washing powder")
- Short time for communicating
- Low cooperation with civil society, transformed into an adversary of the EUKK

Final remarks

Analysing the communication strategies in the 10 former candidate countries (today, the 10 new member states) and member states, we can notice that those campaigns were more efficient in candidate countries. However, the information level has not tremendously increased. The referenda results were positive, while such referenda organised in Member states would have had an uncertain result. The Accession Treaty was voted by the parliaments of the Member States.

The quality of the communication campaigns was different, comparing the 10 former candidate countries and the member states and the former candidate countries. The stake was different: the former candidate countries had to obtain 50% + 1 in favour of EU accession, but also to communicate to accelerate the internal preparation for the EU membership. In member states, the campaigns pursued to inform citizens (concerning the acceding countries, identifying fears, in order to better negotiate – e.g. 2+3+2 transitional period for free movement of persons, transitional period for transport).

As regards the administrative capacity, the situation was different: the funds allocated by the European Commission were consistently bigger in the former candidate countries than in the member states. On the other side, government of the former candidates allocated significant funds for their own communication campaigns, especially before the referenda. They cooperated with the civil society, local administration etc., thus multiplying the communication effect and making it more credible. In the former candidate countries, the target groups were carefully tailored, while in the member states, the target groups were more general.

Lessons to be learned:

- Carefully strategising: analysing possible problems and intelligent tactics
- Existence of an exist strategy
- Using multiplying networks
- Maximising the impact by using the information in order to generate more information (ex. utilisation of mass-media when the enlargement commissioner, Gunther Verheungen, handed the flags to some Hungarian cities; when the European Commission Delegation in Cyprus handed information material in schools)
- Careful survey of the target groups behaviour, in order to avoid using wrong messages or channels
- Pre-testing the actions by pilot programmes

- Realising some actions, despite the lack of funds (meeting, discussion in schools etc.)
- Evaluating the projects and using the evaluation for planning future actions
- Support the efforts of other groups, persons etc.
- Associating the communication actions with public figures at the central or local level
- Sharing information and experiences, mistakes, success etc. with experts from other member states and candidate countries, in order to avoid the same mistakes

Romania and Bulgaria should learn very carefully from experience of the former candidate countries, not only to prepare for a referendum (if it is organised), but most of all, in order to help the society (companies, citizens etc.) to prepare for the EU accession. The communication should be intensified internally and externally (in the Member States), in order to prepare the public opinion and to obtain a positive vote for the Accession Treaty.

NOTES:

[1] Turkey and Croatia will not be analysed because they are not part of the enlargement process with 12 candidate countries.
[2] Perceptions of the European Union: a qualitative study of the public's attitude and expectations of the European Union in 15 member states and 9 candidate countries, realized by OPTEM S.A.R.L., June 2001 http://europa.eu.int/comm/public_opinion/quali/ql_perceptions_summary_en.pdf
[3] Eurobarometer spring 2004, joint full report of Eurobarometer 61 and CC Eurobarometer 2004.1
[4] Eurobarometer 57, http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc
[5] http://europa.eu.int/comm/public_opinion/archives/cceb/2003/cceb2003.4_first_annexes.pdf
[6] Eurobarometer, 2003, autumn – comparative highligt report, http://europa.eu.int/comm/public_opinion/archives/cceb/2003/cceb2003.4_full_report.pdf
[7] Andreas Wilkens, *Le désir d'Europe et réalités nationales: l'opinion publique allemande et la construction européenne,* in *Les opinions publiques face à l'Europe Communautaire, entre cultures nationales et horizon européen* PIE Peter lang, Bruxelles, 2004
[8] Eva Ring, *Le regard hongrois sur l'intégration européenne,* in *Les opinions publiques face à l'Europe Communautaire, entre cultures nationales et horizon europeen,* PIE Peter lang, Bruxelles, 2004
[9] www.kum.hu
[10] www.median.hu/kutatasok, p.2, tabelul 2

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36. http://europa.eu.int/comm/public_opinion/archives/cceb/2003/2003.2_full_report_final.pdf
37. http://europa.eu.int/comm/public_opinion/archives/cceb/2003/2003.2_annex_final.pdf
38. http://europa.eu.int/comm/public_opinion/archives/cceb/2003/2003.3_candidates.pdf
39. http://europa.eu.int/comm/public_opinion/archives/cceb/2002/cceb_2002_en.pdf
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41. http://europa.eu.int/comm/public_opinion/archives/cceb/2002/cceb_2002_ann.pdf
42. http://europa.eu.int/comm/public_opinion/archives/cceb/2001/cceb20011_ann.pdf
43. http://europa.eu.int/comm/public_opinion/archives/eb/eb55/eb55_en.pdf
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50. http://europa.eu.int/comm/public_opinion/archives/eb/eb61/eb61_en.pdf
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Reflections on Accession Negotiations With the EU

Ciprian Goriță

This paper attempts to make progress in clarifying issues related to the accession negotiations process, mostly with regard to the procedural and institutional – political mechanisms employed by candidate states to join the EU. In fact, an analysis of this process should comprise, at least at the preliminary level, elements related to the actors involved in the negotiation process, principles of negotiation (institutional, between the EU and candidates, in Brussels, within candidate countries), specificities in accession negotiations and strategies and negotiation tactics of the EU / Member States and candidate states. Moreover, data is required on fulfilling the accession criteria, assessing the internal preparation for chapters of negotiation and the results obtained by other candidates in negotiating their accession. Most efforts are directed towards preparing the external and internal environment of negotiations, harmonising interests with the Member States and the EU, as well as with non-governmental actors (interest groups, civil society). Furthermore, it is worth mentioning the impact of other events on the internal and external environment of negotiations, such as the Iraq crisis, the debate on the EU Constitution.

Due to the complexity of the subject, this paper will focus on delineating key terminology dimensions and specificity of accession negotiations with the EU, comparing with other negotiation processes in the international plan.

Conceptual and pragmatic understanding of accession negotiations would favour further analytical evidence of the process and would avoid politicisation of the subject. Furthermore, short and long-term effects of the accession to the EU would be clearer emphasized both in the Member and candidate countries, in the benefit of the enlargement process.

Generally, over the long term, the EU enlargement will determine geoeconomic and geopolitical benefits (Moravcsik and Vachudova, 2002*b*; Grabbe, 2001). The perspective of prosperity and integration to an area of security, justice and freedom is strongly influencing the candidate countries policy options. From the start, accession to the EU becomes a better alternative of the Central and Eastern European candidates. In this respect, some may characterise accession negotiations as a win-win process.

Accession negotiations: specificities

First, this complex, multi-level process can be seen as the sum of interdependencies among multiple dimensions, from the political, economic, social and cultural perspective, as it involves the sum of the interests of internal and external actors involved in negotiation. We should also consider the context in which the EU enlargement process is viewed, as this context is strongly related to the convergent interests of potential and existing members (Moravcsik and Vachudova, 2002*a*). In this respect, accession negotiations are, as Robert Schumann pointed out, a process of harmonisation and then fusion of the interests

of actors involved (Puşcaş, 2003). Even looking from a rationalist or sociological perspective, accession negotiations can be seen as a process of accommodating and balancing interests of actors involved, to obtain a compromise.

Accession negotiations with the EU follow substantial *different rules* from those used by the traditional diplomacy (Andras Inotai, 2001, 2002). In traditional diplomacy, actors have clear differentiated initial positions. Generally, the end of negotiations is equal to a compromise, a mix solution satisfying actors involved and containg elements of each initial position. In the accession negotiations, the starting and ending point is the *acquis communautaire*, which has to be implemented by all candidates. In this respect, the "negotiation" concept is at least inadequate in the context of discussions between Brussels and applicants (Andras Inotai, 2001, 2002).

A specificity of the accession negotiations refers to the *asymmetric positions of the actors* in negotiation (the EU / Member States and candidate countries) (Inotai, 2002). Certain dimensions are emphasized (Friis and Jarosz, 2000): the applicant is in the classic *demandeur* position of an actor that is interested to join a club with strict rules. The applicant negotiates with an actor having more comprehensive and clearer vision and understanding; in other words, differentiation in information is evident; other issue contributing to this differentiation refers often to the secrecy kept by candidate countries on their negotiation. Differentiation in information also contributes to the differentiation in experience (Member States and the EU approaches indicate more pragmatism than candidate countries, which were not involved in negotiations of such complexity).

The asymmetry in accession negotiations determines special attention for other dimensions: power, negotiation results, and accession criteria. What we notice when we analyse power is the transfer of emphasis from power to strategic capacities, used as arguments in formulating positions and helping to coagulate internal interests.

In this respect, with regard to the negotiation results, the following question arises: if the acquis is not negotiable, what we negotiate? A simple answer would be transition periods. That would mean focusing on identifying areas, sectors where candidate countries can obtain transition periods (temporary exceptions from implementing the acquis) (Inotai, 2001, 2002; Friis and Jarosz, 2000). However, no rule is set to incapacitate only candidate countries to make efforts for obtaining transition periods. The present enlargement wave came along with changes in the EU attitude (transition period of 2+3+2 years to get a compromise in negotiations for chapter 2 [Free movement of persons], with regard to the free movement of labour force).

Of course, in negotiations with the EU, fulfilling the Copenhagen criteria is essential. However, efforts are considerable; requests are immense, non-negotiable, uniformly applied and strictly monitored; transition from former Communist states to functioning market economies (in Central and Eastern Europe), establishing the administrative capacity (much more substantial than in every other enlargement wave) determined considerable efforts from applicants. What should be also considered is the fact that Member States had almost 50 years to accommodate (Moravcsik and Vachudova, 2002*b*).

Another characteristic of the accession negotiations refers to its *multi-level dimension*. At present, the 25 Member States agree on a mandate for negotiations with the applicant (from the Commission technical level, the opinion is analysed by the Enlargement Group within the EU Council, then COREPER, following for Foreign Ministers to take a decision). Based on this mandate, the Presidency negotiates concrete/sectoral conditions of accession with the candidate (Friis and Jarosz-Friis, 2002).

Taking into account that an internal compromise in the EU requires accommodating interests of 25 Member States, the common position has great value for applicants. The candidate is less able to change the compromise and has to deal with a difficult choice: either accepts an option less

beneficial, either it keeps pressing for a new compromise (with the risk of obtaining a better alternative / result only after a long period of time). The difficulty of the choice comes with the tight schedule envisaged by the applicant for negotiations.

Not only Member States experience the process of harmonising positions and interests. The same process is visible within the candidate countries, where the need for a systematic preparation for accession (political and policy coordination, technical work) is acknowledged. That means economic and political reforms to sustain credibly the arguments brought at the table by the negotiation team. Furthermore, one should not forget the coordination of preparation for accession (legislative harmonisation, implementation of the acquis, unique voice in negotiations), harmonising interests of all society groups and open dialogue (to determine increased awareness of the effects of accession to the EU).

Moreover, accession negotiations are related to *systemic changes* determined in the EU by the enlargement waves: every accession means modification of the Treaties, as we take into account the weight of votes in the Council. That might reopen, theoretically, the discussion on already agreed compromises among Member States. In other words, accession negotiations can bring changes in the political investments made by the Member States (Avery, 1995). Furthermore, accession negotiations cannot be viewed only through the lenses of achieving a single compromise, or immediate geopolitical and geoeconomic benefits. The real result is a long-term mutual beneficial relationship. According to Graham Avery, accession negotiations do not strictly refer to the future relations between "you and us", but to the relations between "future us".

In this respect, what are the *effects of starting accession negotiations*? Firstly, it means that the candidate is fulfilling the political criteria (with regard the democratic system, institutions, state of law, minority rights). Secondly, it looks to the interrelation between the progress in fulfilling accession criteria and the status of the accession negotiation: the existence of the functioning market economy determines the advancement in negotiations to the group of financial chapters or to the economic chapters with significant budgetary impact. Fulfilling these two criteria reduces significantly the possibility of accession for political and economic unstable states, which might bring long-term prejudices to the Union's objectives (for example, the Lisbon objectives).

If the two criteria pay special attention to the economic and political reforms necessary to ensure good governance as well as internal modernisation in convergence with the European model, the third criterion is a bit more complicated (Grabbe, 2001): the ability of a state to assume responsibilities deriving from EU membership. That supposes not only economic or foreign policy commitments, but also the necessity to implement the acquis. What should be remembered is that fulfilling economic criteria without respecting human rights will not ensure accession. Moreover, the legislative harmonisation is not sufficient, and full implementation of the acquis is equal to the development of an efficient administrative capacity.

Thus, to attain a certain level of credibility and predictability in the implementation of the acquis, governments have to pay special attention for institutions with sufficient openness (to cover the field of activity), transparency (for the public opinion), possibility to quantify the progress registered, power (to ensure the success in implementing the acquis), as well as independence in the decision-making process (Nicolaides, 2002).

In conclusion, for governments and the public administration in general, the necessity of a *coordination process* in preparing for accession is evident, as the acquis represents a considerable volume of legal norms which do not correspond perfectly to the sectoral responsibilities between line ministers and the specialised state agencies (Brusis and Emmanouilidis, 2000). Coordination is tri-dimensionally developed, at political, policies and technical work levels. Political coordination regards selecting strategic objectives, defining the political priorities of the Government in the process of negotiation

and communicating them to the public opinion and the EU. In fact, this implies the main institutional coordination mechanism of the process of negotiation; while Romania, the Czech Republic, Poland and Estonia have decided to establish specialised committees for European integration in the Cabinet (at minister level), Hungary and Slovenia based their strategies on the Cabinet in general or on the coordination institutions at secretary of state level.

Coordinated policies ensure the transposition of the Government's strategic objectives into negotiation positions and the representation in the relations with the EU structures and the Member States. It means that the Ministry for Foreign Affairs or another specialised structure, not integrated in the respective ministry, is in charge with the preparation and unrolling of negotiations. Thus, Hungary, Estonia and the Czech Republic chose the first strategy (or, at least, in the Czech Republic, the deputy foreign minister runs the negotiation delegation), while Romania, Poland and Slovenia have decided for a special structure. The coordination of the technical work is translated into the management of formulating negotiation positions, facilitating optimal participation of all relevant actors in the process of negotiation. In this respect, internal experts on sectoral domains are important elements (working groups / sectoral delegations are established for 31 chapters of negotiation).

The coordination process is much more important as implementing the acquis (that is a crucial issue in accession negotiations, monitored by the European Commission) is taking place both at central and local level. In this way, harmonising interests at national level and clear articulation of the national interest through the best possible decision are part of a complex process.

In the external plan, the multitude and complexity of the interdependences connecting sectoral problems to specific behaviours is clearly shaped. Candidate states look for national interest, which is increasingly harmonised with the interests of the Member States. In fact, in preparing the external environment of negotiation, the candidate has to consider the sensitivities of the Member States on certain sectoral domains, interdependences, assumptions, modified perceptions, initial negotiation positions and the probability of further modifications. Moreover, of special importance are subjective values (tangible and intangible elements in negotiation), idiosyncratic dimension, constituencies, interests and positions in the external plan, internal political evolutions and public opinion orientation in the Member States.

All these elements are put together into specific frames (the current presidency of the EU Council, bilateral or multilateral, impact issues in evaluating consultations and communication), institutional mechanisms of negotiations and major actors (the European Commission, COREPER, Councils of Ministers, the European Parliament, Member States). Moreover, this framework should be analysed from the perspectives of punctual dimensions and extraordinary international evolutions (such as the Iraq conflict).

In the analysis of accession negotiations, not only procedural mechanisms or the principles of negotiation with the candidate states should be taken into account. Special attention has to be also paid to the Brussels' perspectives on negotiation: from separation of powers in the EU structures to the internal institutional reconfigurations, balancing interests between institutions and negotiation levels. Negotiations in the EU are characterised, in general, by interstate concessions and compromises that tend to reflect the priorities of the key states in the EU (Moravcsik and Vachudova, 2002*b*).

Mainly, principles of negotiation in the accession process are already established: agreements in negotiations, even partial, will not be considered definitive until the final agreement is achieved (no chapter of negotiation is definitively closed until all 31 chapters are closed). In this way, the EU eradicates the possibility to definitively agree on a sectoral acquis that might be outmoded at the date of final Conference on Accession. Moreover, if the date of accession is postponed,

some of the transition periods requested by candidates should be re-analysed (the Hungarian case on chapter 19 is illustrative).

Furthermore, the opinion expressed by one party on one chapter of negotiation will influence position on other chapters of negotiation. Another principle is that all candidates are part of the enlargement process on equal basis and will join the EU respecting the same criteria.

Finally, preparation for accession is individually assessed; progress in preparation is evaluated on own merits and will condition the advancement in negotiations, determining the date of accession; that makes possible the catching up process, even if the dates for the start of negotiations are different.

These principles were reiterated at the Copenhagen European Council (December 2002) in the declaration "One Europe", signed by the heads of states and government of the 15 Member States and the 10 candidate countries.

Negotiation Strategies: Elements

A brief analysis of the negotiation process would also emphasize the constraint elements on the negotiating team: time, resources, costs and benefits. Between these elements a high level of interdependence can be observed: *time* (the actor that will register higher costs will make concessions much faster) and *resources* (the tactical ability to persuade the negotiation partner to make changes);

Of course, these elements are also available for building an effective strategy in accession negotiations. For example, agreeing on the date of accession to the EU is strongly related to the negotiations, with impact on Member States and candidate countries. On one side, it imposes a deadline in terms of creating pressure instruments in terms of credibility both for the EU (unable to finalise "the negotiation game") and the candidate countries (forced to fulfil accession criteria in an accelerate manner).

In fact, the *national interest* does not translate only the sets of government policy options, but also the result of harmonising interests, positions and options of all internal society groups. In this respect, taking into account the long-term effects of European integration, the dialogue with the civil society is a crucial element in accession negotiations.

The relations between the temporal dimension and national interest in accession negotiations are evident. Fluctuations might appear, in the sense of possible changes in the sets of options: some interest groups lose influence in shaping the national interest, new dimensions of analysis have to be taken into account or the staunchness on strict and inflexible pursuit of national interest can cause important temporal delays (Inotai, 2001).

From the Member States' perspective, the *benefits* of enlargement are mainly economic and geopolitical – creating trade opportunities and stabilising neighbouring states (Grabbe, 2001). For candidates, the benefits might include the possibility to access the biggest internal market in the international plan, strengthening relations with the Western Europe and internal democratic stabilisation (Moravcsik and Vachudova, 2002*a*). Comparatively, taking also into account the costs of exclusion from the accession process, these advantages become increasingly evident.

As the benefits of enlargement outweigh substantially *costs*, the candidate countries prefer naturally a compromise, which reduces their manoeuvre room in accession negotiations. In fact, accession to the EU delineates the net national interest from the perspectives of rational estimates between benefits and costs and of internal reforms (which will have a beneficial effect on the living standards and preparation for facing the competition on the Internal Market). Furthermore, position in the external plan (being part of a major international organisation) is also important. According to Moravcsik and Vachudova, this "asymmetric interdependence" will register subtle changes of nuance with the accession to the EU.

In the process of building the strategy of negotiation, the Member States' behaviour in the EU decision-making is another element of analysis. According to Schimmelfennig (1999), the *preferences* and the behaviour of Member States can be explained based on rationalist micro-fundaments: egoism and instrumentalism; from this perspective, actors seek material gains (maximising own power or wealth). Practically, with preferences determined exogenously by the egocentric collective behaviour, the Member States enter into a negotiation process in which they act strategically to maximise individual gains in an interdependent situation. Thus, the candidate states conceptualise the situation and, in a negotiation with no exception from the rules (derogations), their policy options can orient towards a positive attitude, such as requests on assistance in implementing the acquis (Nicolaides, 1998).

Comparing with precedent enlargement waves, the negotiation strategies of the candidate states were re-dimensioned largely because derogations are unacceptable for the EU and Member States. In this respect, the general focus of the negotiation strategy on transition periods is a logic orientation. Here we identify a relationship between the transition periods and the flexibility of the negotiating team. Both dimensions are affected by the quality and strength of internal interests: a large number of transition periods indicate also a certain level of coagulating interests in the internal plan. In this case, some might highlight the fragility of the internal equilibrium (in the sense of permanent pressures) with regard to the intensity and the effects in following certain political options. Several countries (Hungary, Poland, the Czech Republic) opted out for a strategy concentrated on a large number of requests for transition periods (Inotai, 2001). Thus, Hungary, due to the strong support from the public opinion for accession to the EU and acknowledgement of the necessity of internal reforms and compromises in negotiations with the EU, drastically reduced its requests for transition periods. Other states insisted on identifying "specificities" to ensure EU acknowledgement for special conditions.

The emphasis of candidates on temporary exceptions from implementing the acquis is also related to the status of internal preparation for accession to the EU and to the immense costs which the implementation of the acquis assumes in some domains (agriculture, environment, regional policy). In general, the transition periods are granted for technical reasons (the impossibility to enforce the acquis starting with the accession date), due to the necessity to protect the higher standards in the candidate countries (for example, the environment protection standards in the EFTA case), national interest (protecting the domestic market – land) or the necessity to help candidates to overcome the social and economic transition (Mayhew, 2000).

In building the negotiation strategy, candidate countries make use of several *tactics* (Friis and Jarosz, 2000; Friis and Jarosz-Friis, 2002): *tying hands* (their position in negotiation is improved through arguments with regard to the pressures made by the public opinion or the interest groups on the government), *threat* (the positioning is even more radical; however, it is strongly related to the alternatives the candidates have), *package deals* (reframing a compromise by coagulating several issues and treating them as a whole – that supposes "linkage creation" between chapters of negotiation), and *dead-weight catching* (the power of precedent in specific cases).

Of course, differentiations are registered with regard to the success with which these tactics are used; in this respect, the smaller degree of asymmetry in the EFTA case determined a larger room of manoeuvre for the EFTA countries; the EU took far more seriously the *threats* of the candidates due to the credible and realist alternatives in relation with the EU membership.

The issue of coordinated visions and negotiation strategies between candidate states remains controversial: the reduced cooperation level and the high confidentiality with which each candidate views the information on negotiations facilitates the use of the "*icebreak*" tactic, preferred by the EU. Taking into account

that some horizontal regulations concern all candidates, based on a single mandate of negotiation (the common position), the EU identifies a more cooperative candidate on a sensitive issue (for all candidates) to "break the ice". Thus, negotiations with the candidates continue afterwards largely in the framework of precedent agreements. Of course, the success of this tactic is more likely in the final phase of negotiation.

Another negotiation tactic can be identified in the provisional closure of chapters, if looking from the candidates' perspective. Nothing is agreed until all is agreed. That means the prolongation of a status on specific, sectoral domains, until the last moment. Thus, the EU can reopen discussion on certain issues to ensure the implementation of the acquis and furthermore, a more favourable compromise.

A tactic for accelerating negotiations and which enjoys high appreciations from the candidates regards the possibility to eliminate blockage points from negotiations on certain chapters (the *set aside approach*). On one side, that means less probability to block negotiations due to a sensitive issue and the advancement in negotiations, with significant impact on the candidates. On the other side, the costs of this tactic are to be seen more at the later moments (final negotiations), as the sensitive issues will have to be solved at the same with the final package, thus making them extremely difficult (Inotai, 2001).

The negotiation strategy illustrates not only the specific behaviour of an applicant in a certain moment, but also the way in which the candidate is thinking, predicting and implementing the negotiating rhythm. Generally, to rapidly advance in negotiation, the candidates approach firstly the easy chapters (the political chapters, which do not suppose implementation of large parts of the acquis), then chapters with moderate problems. Following are increasingly difficult chapters (regarding social and economic cohesion, chapters related to the internal market, as well as chapters with significant budgetary impact [competition, environment, JHA]). The final phase is linked to the financial chapters (agriculture, regional policy and financial and budgetary provisions).

The complexity of the chapters of negotiation should not take into account only a profound descriptive approach (31 chapters), but also the strong connection between the progress in accession negotiations (from the perspective of the chapters of negotiation) and level of fulfilling the accession criteria. The level of preparation at chapters of negotiation indicates the level of preparation of the entire society for accession to the EU.

Furthermore, connections between chapters of negotiation are evident. For example, from the perspective of the necessity to create and develop a stable financial system, chapters 3 (Free movement of services) and 4 (Free movement of capital) are interdependent with the fulfilment of the criterion of functioning market economy. Opening negotiations for chapter 11 (Economic and Monetary Union) depends on the evolution of negotiations at chapter 4 (Free movement of capital), as the full liberalisation of the capital fluxes is a pre-condition for participating to the Economic and Monetary Union (the fundamental requests of the acquis at chapter 4 are the liberalisation of all capital operations and elimination of the authorisation procedures). Practically, the participation to the EMU cannot be made in the absence of full liberalisation of capital fluxes.

Concluding, in the context of the EU negotiation in the international plan, the accession negotiations represent only a small part of the institutional, economic, political and security mechanism represented by the EU. However, accession negotiations indicate a multi-faced process, developed at many levels, both internal and external; a simple definition would stand for an evolutionary process of accommodation, harmonisation and then fusion of the interests of actors involved.

Beyond the official and formal framework of the relations with the EU, of the costs and benefits of enlargement, of the decision-making process and the general framework of taking decisions with regard to enlargement, the accession negotiations are more than

assessments of the level of internal preparation, of necessary adjustments in implementing the acquis, or of mechanisms through which these adjustments are monitored and evaluated. That assessment remains valid even in the context of which certain normative, procedural and institutional rules, including specific aspects and different measures for obtaining more advantageous compromises, are emphasized by pursuing national interest. In fact, accession negotiations are the first comprehensive contacts and opinion exchanges with the Member States and EU structures on each chapter of negotiation and sectoral policy. In other words, accession negotiations indicate the final level of preparation of candidates for accession, the accommodation of the interests of candidate countries and Member States before the convergence and fusion of interests within the EU.

In the evaluation of the contemporary complexities in accession negotiations, substance elements regard the continuous evolution of the accession criteria and of the Union in itself, the increase in number of the candidate countries, as well as the impact of European integration in Member States and candidate countries. However, according to Moravcsik, an exact and detailed evaluation of the effects of enlargement, in costs and benefits, is almost impossible).

Furthermore, we have to take into account national, European and international calendars, formal decision-making rules in European institutions and Member States, systematic preparation of the candidate states for accession to the EU as concomitant process with the transformation and modernisation process (Puşcaş, 2003), interactions among different negotiation levels (Brussels, national, regional and even local levels) and lobby to the European institutions and Member States.

The events of the last decade (1993-2003) emphasized the intrinsic relations between the international evolutions (Convention on the Future of Europe, fulfilling Lisbon objectives [from June 2000], or even conflict, such the Iraqi one) and the evolution of the process of accession negotiations. Thus, certain influences can be observed in the EU internal rhythm, the attention of the Member States for enlargement in general, and accession negotiations in particular, as well as in the possibility to bring into line the candidates with the evolution of the external environment of negotiation and continuation at the same pace, or even more accelerated, of the preparation for accession to the EU.

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Negotiation as a Method for Making Europe

Vasile Puşcaş

In Europe, accession negotiations to the EU, provisionally closed chapters and chapters still in negotiation, future positioning of a future Member State within an enlarged EU are more and more often subjects of interest. Of course, it is self-understood that accession negotiations are only a small part of the daily European negotiation process in Brussels or in the Member States' capitals. From this perspective, in media and in analytical and political circles, the way Europe will function in the European and global plan is a frequently discussed subject (Smith, 2004). Undoubtedly, this interest represents a positive aspect for the society involvement in the European integration process.

However, we also have to take into account the way the EU attitudes are built, and, from this point of view, the way a Member State will understand to make its presence felt in the European decision-making process. Finally, when we refer to the EU, do we have to take into account only rational or selfish interests? Are we speaking of a process of accommodating interests among Member States? The answer must be seen from the perspective of the EU as an enormous negotiation process (Meerts, 2003) in defining the European interest. Actually, what are the lessons offered by the European construction process until now and in what way could they be utilised to optimise the state-institutional and Community behaviour after 2007?

When we refer to the EU as an enormous negotiation process, we take into account, mainly, negotiations over the EU nature, negotiations within the EU (internal negotiations) and negotiations of the EU (external negotiations). In other words, negotiations focusing on different national interests (with regard to the EU development or accession to the EU), internal negotiations that include comitology, multiple institutional framework, different sectoral coalitions, different cultural approaches and negotiations of the EU in the international framework, as a unitary actor (Pfetsch, 1998).

In this respect, this paper will not focus on identifying interests of each Member State or on the evolution of their interests in key moments of the European construction, but rather on identifying modalities, through which negotiation processes specific to the Union have influenced and still influence new developments in the European construction process.

In other words, attention will be paid to the interactions between negotiation processes and the EU's diachronic evolution, the interdependencies between processes of Member States' harmonising interests and processes of internal reflection on the functionality of the European construction.

Accommodating Interests Among the Founding Fathers

The European process is clear: in 50 years, from a sectoral bilateral cooperation, we deal at present with a political and economic structure with legal and political identity, in which Member States are willing to identify best possible European solutions. The starting point in this European construction process was the plan conceived in 1950 by Jean Monet and proposed by the French Foreign Minister Robert Schuman. The plan implied the harmonisation of France's and Germany's interests in a sector considered essential for

their economic and political development: the coal and steel production. The sovereignty transfer toward taking common decision became an essential condition for membership.

Afterwards, other four states have immediately begun negotiations: the Benelux countries and Italy. Due to divergent perceptions over the future of this integration process, imports issues (trade patterns) and the conservative attitude toward the sovereignty transfer, the Great Britain refused France invitation to participate to this project. For the same reasons, the UK did not participate to the negotiation of the Rome Treaties (1957).

In other words, from the start, the European integration process, practically the European construction bore the mark of evaluating the chances of harmonising the participants' interests, from national and Community perspectives.

The Classic Method of Enlargement – Applicability in EU Negotiations for Enlargement

To emphasize the role of negotiation in building Europe, special attention has to be paid to the enlargement process and the elements of continuity in the European construction – in other words, to the processes that suppose consensus of participants. Of course, the starting point of a general perspective might include "the Community method", the continuous shift between "deepening" and "enlargement" or the "spillover" theory. From the negotiation perspective, the starting point in the diachronic analysis is the classic method of enlargement, an integrative part of the Community method.

As far as the logic of enlargement is concerned, a consistent pattern is registered not only with regard to the formal accession procedures, but also with regard to the implicit assumptions and the principles that shaped the expectations of participants in the negotiation process (Preston, 1997).

What do we mean by formal accession procedures? They represent an entire formalised process, which includes procedures referring to the accession negotiations (Art. 237 of the Rome Treaty), submitting the application for membership, preparing the Opinion by the European Commission, its adoption by the Council, taking into account the opinion expressed by the Commission (in the case of Greece, although the Commission recommended the extension of the pre-accession period, the Council decided for the immediate beginning of accession negotiations), the Conferences on Accession, the accession negotiations, preparing and ratifying the Accession Treaty.

Generally, the basic rule is that of integrating new members into a club with an ongoing agenda. More concrete, the main idea looks to the way in which one part (the future Member State) will apply the rules of the club. This issue affects even the dynamics of the accession negotiations through the transfer of responsibility for adjustment (implementing the acquis) to the future Member State. The latter has a strong reason to finalise negotiations as soon as possible due to the benefits resulted from accession and the necessity to avoid "prolonged" costs of adjustment.

These benefits, according to Moravcsik and Vachudova (2002), are mainly economic and geopolitical. The costs dimension is a complex one, referring especially to costs from implementing the acquis and costs determined by the international strategic framework in which the candidate negotiates. In other words, the longer the accession negotiations last, the higher the costs of adjustment will be for the candidate. In the context, as a first conclusion, accession negotiations, as part of the EU internal negotiation process could be seen as a "waiting game" (Brücker, Schröder and Weise, 2003). That means the EU (and Member States in consequence) is willing to wait longer to accept a better-prepared member, while the candidate holds on to a faster accession without great internal costs (determined by the necessity to implement the acquis).

In this respect, beyond the unique institutional perspective (that concentrates a mix of supranational and intergovernmental organs, as well as policy networks), the EU can be seen also as a mechanism to define an adequate behaviour of the actors. Major disagreements in accession negotiations will be avoided until accession (Preston, 1997). Once the candidate is in "the club" and has full rights of vote and involvement in the decision-making process, these disagreements will be internalised.

Generally, a continuity of certain principles specific to the EU negotiation process and components of the classic method of enlargement is registered: the adoption of the entire acquis (derogations are not agreed), the establishment of new instrument policies to overlap the old ones (rather than reforming the existing instruments), use of enlargement by Member States to follow own interests (the decision to provisionally close a negotiation chapter must be voted unanimously by Member States; some states use these opportunities to extract marginal concessions in the exchange of vote [for example, Greece received funds through the Integrated Mediterranean Programs in the exchange of de-blocking the 1986 enlargement]), exclusive focus of the accession negotiations on practical issues, preference for negotiating with groups of states that already have close relations, etc.

The process of accommodating the actors' interests regards, in the first place, the possibility of maintaining the existing formal or informal agreements in the same form. For example, the budgetary problems resulted from UK's trade relations resulted in the renegotiation of the accession terms in 1975, the budgetary debate being partially solved in 1984; the pressures of Member States on Spain over agriculture and fisheries have determined later a rigid position of Spain in these two sectors, in the context of other enlargement waves (Preston, 1997).

From the Founding Fathers to the EU of 25 Members

The first enlargement must be framed into the context of strategic interests of UK, France and Germany, of different visions over the economic development models, as well as of European projects (The European Coal and Steel Community [ECSC], The European Free Trade Association [EFTA]). Moreover, we must also take into account the harmonisation of interests of UK and the other three candidates (Ireland, Denmark and Norway) with the interests of "the six".

What is evident from the first enlargement is the fact that the negotiation process in the EU does not only mean interaction, at the negotiating table, between states on political or sectoral issues, but also internal negotiations, within states. In other words, consequences are found both in the external and internal negotiation environment. No matter how ingenious, the final agreement has to be sold to the internal environment (Puşcaş, 2003). In this respect, UK (which requested the renegotiation of accession due the negative economic impact) and Norway (where accession was blocked twice through referendum) are eloquent examples.

The first enlargement denotes the necessity of building a stable internal negotiation environment when negotiating accession (the case of Norway as regards the referendum) and the evident interaction of the closer interdependencies between Community rules and the interests of Member States and candidates as the European project registers progress (the case of UK over the contribution to the budget, the case of Ireland over its special economic problems, the case of Norway over fisheries). We must also take into account the external environment of negotiation (for example, discussions within the EC over the budget, Common Agricultural Policy or Common Fisheries Policy had direct effects over the accession negotiations of the four candidates. Practically, the interests of participants in the negotiation process become more and more coherently expressed and oriented as the European construction is developing.

Furthermore, Member States look for arrangements to match their interests before new members are admitted. In the case of the first enlargement (1973), France insisted for

the introduction of the "own resources" system in financing the EC budget, thus positioning itself as a net beneficiary (during the Georges Pompidou presidency).

The external (impact on accession negotiations and on candidates mainly) – internal (accommodating interests of Member States on special segments) interaction has become increasingly evident and sometimes, hard to distinguish. It is the case of Spain's accession to the EU, whose negotiating process was complicated by internal Community negotiations (the temporary framework to adopt the acquis communautaire) as well as the special interests of some Member States. More concretely, the position of France over agricultural sector, of Greece over Mediterranean issues, the budgetary correction in the case of UK.

In this respect, the rhythm in which the Union progresses with regard to the enlargement is directly related to the speed with which the deepening process takes place, and ultimately, to the speed of accession negotiations. Therefore, the determination of some candidates to postpone debates that are more heated until after accession.

The relation between transition periods and implementing the acquis, as element of the classic method of enlargement, proved its viability even in moments of uncertainty over the future of the European integration process. Greece is a clear example. Of course, delineating form internal European debates and the overall EC evolution has determined costs. These are visible both in the cases of Greece and the EC. As regards Greece, that meant a more flexible position in accession negotiations due to delay fears and eventually coupling with the group of Spain and Portugal. As regards the EC, that meant a stronger position in the negotiation. Moreover, the enlargement brought along the risk of internalising the Greek structural economic problems before developing adequate policy instruments, aimed to solve them.

The Greek request for financial compensations (in March 1984) through the Integrated Mediterranean Programmes as trade-off for accepting the accession pf Spain and Portugal (Preston, 1997) demonstrates how quickly Member States can learn to use their economic characteristics in their own advantage during internal European negotiations. Furthermore, that demonstrates inherent differentiations between Member States and candidates in the Community negotiation system. Comparing with the transitional aid of ecu 700 million for Portugal, the main Greek sector received ecu 2000 million especially for restructuring and coping with the competition on the Community market. The implications of this negotiating technique have been later understood by Spain (after becoming a Member State), which approached the next enlargement with a similar strategy (EEA, EFTA).

Furthermore, in the negotiations over the nature of the EU (related to enlargement), a tendency to establish new institutional mechanisms within the EC is registered, rather than revising the existing ones: for example, Greece's negotiations over the budget (in a first phase, Greece calculated [in December 1978] that during the transition period, it will be a net contributor). That conducted to the establishment of a transitional reimbursement mechanism, which ensured Greek position as net beneficiary, even in the context of the VAT contributions to the EC budget. Practically, the temporal framework of Greece's accession negotiation was not determined exclusively by the complexity of the acquis and the necessity to harmonise the interests of main Member States, but by the special attention the EC paid to the negotiations, due the precedents of Spain's and Portugal's accession negotiations. That denotes the attention of Member States for future EC orientations, in the context of maintaining own interests on the same coordinates in the European plan.

Spain's and Portugal's accession negotiations demonstrate the implementation by the EC of a dual transitional arrangement (two phases) meant to solve the complexities of negotiations. In other words, enlargement determined or constituted the opportunity to launch procedures to facilitate the EC

successful functionality, event in the context of structural changes. The final terms comprised elements of "classic" transition (up to seven years and involving mutual reductions of tariffs and quotes) and a second transition phase (extended up to ten years), covering sensible products (especially Mediterranean agricultural products).

The contribution to the EC budget had to be regulated into a period of more than six years, in which the contributions and funds received by Spain were equal, Portugal being a net beneficiary. Differentiation between Spain's and Portugal's terms of accession reflects the different impact of these states over the EC from the perspective of sensible economic sectors and implicitly, of the producers' internal lobby groups. Again, we might emphasize the importance of the internal-external relation in the European negotiations as well as of the modalities through which European decision and solutions are influenced by pressure groups.

According to Lisa Dominguez, the dual transition was used as mechanism to "protect the EC from Spain and Portugal from the EC". In other words, the longest transitional periods for Spain appeared in the sectors in which Spanish exports were highest (fruits and vegetables), and the shortest in the "Nordic" sectors: dairy products and cereals.

The 1995 enlargement with Austria, Finland and Sweden raised questions on the opportunity of EU enlargement, especially from the perspective of the impact of European integration over the national, internal, development processes. Practically, the program for completing the Internal Market (of 1985) and the plans for the EMU from the Maastricht Treaty, with elements of liberalisation and supranational coordination, could threaten the national policies' autonomy even more. In the case of the 1995 enlargement, these debates became more evident, especially in Austria and Sweden (liberalisation versus welfare and social protection programs, CFSP development versus neutrality).

In average, the EFTA group's accession negotiations lasted the shortest (comparing with other enlargement waves). That is explainable, as the candidates have already adopted approximately 60% of the acquis during the negotiations for the EEA. Both technically (in term of the implementing structures of the acquis) as well as substantially (in terms of the overall policy alignment), a high level of convergence existed even before the start of negotiations. Moreover, Member States did not have special interests to protect (although it was appreciated that agriculture and fisheries could raise problems in the final phases of negotiations).

An exception from all other enlargement waves was the issue of environment standards. It was appreciated that the higher standards in the EFTA group could have effects on the free movement of services. The final compromise aimed to maintain the EFTA rules for a period of four years, while the enlarged Union would revise the sectoral acquis towards harmonisation. Practically, the EC demonstrated a greater flexibility in interpreting the acquis than in precedent cases (adapting structural funds, accepting the EFTA environment standards, continuing the state monopoly in the en-detail alcohol sale).

Preoccupation for the EU internal agenda has become more evident with the start of accession negotiations with twelve new candidates. Even if delimited in the first phase in two waves, differentiations in the rhythm of negotiations diluted gradually, as the internal preparation processes for accession have registered progress.

As regards the enlargement-deepening relation, the European Commission has adopted a new accession strategy (in October 1999). It stipulated the acceleration of the enlargement process, aiming to ensure the fact that accession negotiations would advance at the same time with candidate's preparation for accession. The new EU approach aimed to provide a better vision over the whole process, to stimulate candidates' preparation efforts and to allow each state to join, provided that Copenhagen criteria are fulfilled[1].

The same accession strategy brought important changes in the process of accession

negotiations. The Commission proposed that, instead of opening simultaneously an equal number of negotiation chapters, "the nature and the number of negotiating chapters to be successively opened with each candidate country will be determined by the EU applying the principle of differentiation, i.e., taking full account of each candidate's progress in preparing for membership under the Copenhagen criteria"[2]. That meant that the EU could decide to start negotiations on a certain chapter only after the analysis of the progress registered by the candidate in the respective field (according to the Copenhagen criteria).

This new type of approach was meant to make sure that negotiations would progress at the same time with the internal preparation for accession. The same principle was applied to the ongoing negotiations: no chapter could be provisionally closed unless the preparation of candidates is according to commitments assumed. Practically, the objective was to avoid a situation in which political pressures for finalising negotiations overlapped the necessity of a systematic preparation.

Moreover, in the European Council Conclusions, the "catching up" principle (the possibility to catch up states that already started the negotiations) took the floor, provided that sufficient progress is registered in the preparations. In fact, "catching up" does not mean only progress in negotiations, but also in political, economic and administrative preparation – in other words, economic and social convergence (Delhey, 2001).

A common element with the classic method of enlargement was the emphasis on the fact that progress in negotiations must be accompanied not only by the progress in incorporating the acquis into the national legislation (legislative harmonisation) but also by the implementation of the acquis.

In what regards the transition periods, differentiation between this wave of enlargement and the precedent ones, was, after completing the Internal Market, the opportunity for the EU to operate without border restrictions (Andrews, 2000). In this respect, the Commission intention was to draw a clear distinction among sectors related to the Internal Market functioning (the regulatory measures had to be rapidly implemented; transition periods should be, thus, only a few and quite short) and sectors where considerable adaptation is needed. The latter needed considerable efforts, including important financial expenses (such as environment, energy, infrastructure; the transition periods could cover limited periods provided that candidates can demonstrate that detailed and realist alignment plans are employed)[3].

According to the classic method of enlargement, accession could take place when the EU was ready. Two sectors were particularly relevant for enlargement and deepening of the integration: agriculture and structural funds. In this respect, the agricultural production was concentrated on products already sensitive in the EU (meat, dairy products, cereals). The productivity was much lower than in the EU, so that the direct application of the CAP could have conducted, in the EU, to surpluses in products that were already a problem, and in the candidate countries to inflation due to higher costs for foodstuff. That, in the context in which the percent of foodstuff expenses exceeded those in the EU. The structural funds reform was automatically coupled with the refusal of the existent beneficiaries to give up funds for candidates in order to allow enlargement to take place in the same budgetary conditions (George and Baiche, 2001).

As specificity, in the accession negotiations of the twelve candidates with the EU, compromises in implementing the acquis are seen on both sides. In this respect, a novelty is the transition period requested by the EU (2+3+2 years) in the field of the free movement of workers. Furthermore, sustained efforts are registered from candidates for recognising their particular characteristics (for example, Estonia on energy, taxation, free movement of persons).

Another particular aspect, also visible in the framework of the Mediterranean enlargement, is the unitary character of the enlargement wave: Romania and Bulgaria are integral part of this enlargement. During the Greek presidency of the EU Council, Member States

declared their support for the accession of Romania and Bulgaria to the EU in 2007, Romania and Bulgaria being supported in their efforts of finalising the negotiations in 2004. The Strategy Paper accompanying the 2003 Country Report underlined the Commission support for signing the Accession Treaty with Romania and Bulgaria in 2005, and at the Brussels European Council in December 2003, the EU expressed its support for Romania to finalise negotiations in 2004 and join the EU in 2007. Differentiations from other enlargement waves are visible and are determined not only by the evolution of negotiations over the EU nature, but also by the internal negotiations, the way the EU progressed and imposed itself as an actor in the European and international arena.

Due to the European integration progress, demands from the future members are considerably higher than in precedent years (1973, 1981, 1986, 1995). From this perspective, the fact that the candidates manage to transpose most part of the acquis (consolidated along the decades) into the national legislation (in only few years) represents a great achievement. Comparing this enlargement with the precedent ones, a much-extended volume of acquis had to be negotiated (Ludlow, 2004). Many new policy areas were not approached when the EU was negotiating with the Mediterranean wave: the Internal Market, the environment policy, CFSP, JHA etc. Practically, these twelve candidates had to fulfil much more complex criteria, while they were not democracies with a long tradition or with the experience of the market economy.

As a conclusion, keeping the "classical" negotiation positions by the EC / EU is not related to any principle to postulate the necessity of continuous actions within the European integration process. The main cause is linked to the importance of accession negotiations in the arena of EU negotiations: accession negotiations are in the first place (EU) internal negotiation processes, in the sense of the necessity for consensus among Member States.

Due the complexity and fragmentation of the issues in discussion and internal negotiation, the result is that of losing flexibility in the external phase of negotiation just because the EU negotiation positions cannot be changed easy. Of course, reconfiguring the EU negotiating position is possible, but the costs the candidates would register also remain important, according to the internal political and economic agendas and the time allotted to the reconfiguration. Negotiable are the transitional arrangements, the modalities to implement the acquis.

Projecting Europe as an Actor With 27 Members

In the evolution of the European integration process, negotiations clearly represent an essential instrument in the European construction. In making Europe. According to Frank Pfetsch, negotiations are central elements in the development and dynamic functioning of the EU, being regarded as the predominant policy method and the main source of the EU's successful functioning (Pfetsch, 1998). In fact, every enlargement of the EC / EU was not just a simple incorporation of the candidates into an exercise of respecting certain existing practices. The EU is much more than that. EU is presently the result of an integrated negotiation model.

Practically, to foresee the medium- or long-term evolution of the EU, not only the way in which processes of coagulating interests and preferences of the multiple actors on the EU scene might suffer changes should receive special attention, but also the impact of the interactions among different governing levels. In other words, due to the complexity of the policies and processes within the EU, the scenarios could bring credible results only if focused on sectoral negotiation processes. That if we look especially to the context in which the European construction is directly related to the increasing importance of polyarchic networks (as formal and informal interactions between actors) and negotiations as defining elements of the EU (Pfetsch, 1998).

Beyond the EU institutional framework, the routine procedures, actors' competencies – elements that pre-determine the decision-

making process – negotiation is a central element of the EU. And that consists not only in daily diplomatic activities, mutual accommodation processes, diplomatic adaptation and anticipated convergence of the negotiating positions. The internal negotiation process has become more transparent in the 1990s (Pfetsch, 1998), once the EU opened more to the public, to the societal sphere. With this openness, the tendency to involve even more actors (state and non-state, public and private, at local, regional, national and international level) is much more visible. Clearly, interactions and relations established between these actors and around certain sectoral issues determine the formation of networks that transcend the national borders.

Of course, these networks cannot ignore the Community spirit, the Community institutions, European values, the determination to build a Europe that is open and energetic in attitude and actions. We will continue to have a Europe where intergovernmental dynamics are correlated with the supranational ones, where the formation of coalitions continues to influence the EU internal and external agenda. But the EU enlargement brings also into attention the necessity to maintain flexibility in EU negotiations.

Conclusions

The enlargement – deepening (of the European integration process) relation came into the attention of states and centres of strategic analysis not only due to the complexity of the accession negotiations, but also due to the effects within the EU: consolidating an Internal Market to comprise all EU and EFTA members, practically leading to the extension of the EU internal negotiation agenda. Simply, the interconnection looks for processes of negotiation over the nature of the EU and internal negotiations (within the EU).

In the context of the increasing number of Member States, the internal negotiation process will grow in complexity and the EU positioning in the following accession negotiations might become more rigid. According to Friis (1998), the development of the enlargement process denotes a clear delimitation between the EU low and high politics as regards the flexibility of EU membership (ever more reduced), accession negotiations (ever more technical), the possibility to postpone accession (ever more probable) etc. In this respect, the EU position in accession negotiations is in the first place the result of internal negotiations (within the EU), of accommodating and harmonising the interests of the Member States before the EU is coming to the negotiating table with an outsider. In fact, as the number of Member States increases, the attention of members for the Union functionality and the fulfilment of the accession criteria to not endanger EU's future, increases proportionally.

Clearly, negotiation as a form to obtain and transpose the results of interactions within and between networks will remain one the EU main characteristics for a long time. It is very probable for these networks, comprising civil society actors (parties, groups of interest), to have an increasing influence on the European decision, in the context of vertical and horizontal channels of negotiation and communication. In other words, beyond the phases of pre-negotiation and agenda-setting, their importance will increase in the phase of taking decisions and implementing them. Moreover, the balance between supranational and intergovernmental, transposed into the European institutional structure, will remain stable in the near future (Pfetsch, 1998).

An eventual simplistic interpretation of the Harvard 3D negotiation model described by D. Lax and J. Sebenius and transposed to the EU negotiations, indicates the fact that we need to extend the negotiation analysis beyond the preferences of the actors involved, to understand the perceptions and the institutionalised logic of actions that give sense to the enlargement-deepening binary relation.

From 2007, Romania will be part of a complex negotiation process in which the attention of Romanian diplomacy and society will have to be oriented not only toward

promoting national interests in distinct sectors, but also toward promoting European interest, overlapping the national one. We must pay attention not only to horizontal or vertical interactions, to formal or less formal negotiations (within European institutions, Member States, civil society) but also to the substance of the ongoing process, the result of the European construction. After identifying the interests of actors involved, attention has to be focused on their sequencing process, to optimise our behaviour in the European and international framework.

NOTES:

[1] European Commission, Composite Paper, EC Cons Doc 12053/99, 13 October 1999, Introduction
[2] European Commission, Composite Paper, EC Cons Doc 12053/99, 13 October 1999
[3] Commission Press Release IP/99/751

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Intrinsic and Extrinsic Rationalities for Asymmetric Conflicts
(the US versus terror case)

Irinel Lazar

Introduction

The 11 September attack *turned two of the most powerful traits* of American society – a free, open, liberal society, endowed with the best transportation system in the world – *into weaknesses*. Moreover, it meant the first *strategic blow* to the vision on the world order. The United States could not be the same after this attack. The *complex nature of the global environment* makes the groupings behind these kinds of attacks little vulnerable to traditional means of combating the enemy.

The three things mentioned above represent the fundamental characteristics of the asymmetric conflict and three reasons for which asymmetric attack is the most effective way so far discovered to reduce the gap between the asymmetric centres of power.

The present paper will try to highlight some of the characteristics of this new type of threat, analysing the causes of its ensue, the modalities of manifestation, the classical types of asymmetric conflicts, and the main categories of asymmetric enemy.

Some of these reasons are intrinsic to the realities of the kinds of societies that spur these asymmetric attackers, while others are the consequence of the impact of American foreign policy abroad – thus extrinsic to the formation of asymmetries.

The analysis will thus equally focus on identifying the main reasons why the United States are the preponderant destination of these types of attacks. There can be alternative answers to the question as to how the 11 September attacks were possible. This paper chooses to focus on several aspects less used in traditional explanations, which often overlook such arguments when establishing the deepest causes of the extreme rise in violence against US interests in the past few years.

Equally, a reason will be sought as to how a certain inertia in adapting the US security system to the realities of the post Cold War era led to the coagulation of vulnerabilities, which further led to an accrual of the losses suffered after the attacks.

1. *The Premises of the Asymmetric War (Attack)*

11 September marked the end of a period when United States perfected their "zero casualty" approach on the conflicts, one which predicated minimum losses for itself and maximum losses for the enemy. After the terrorist attack on the WTC, president Bush had to declare war to the enemy, before knowing who that was. This new type of enemy is a mobile one, with a trans-national or sub-national character. This marked the beginning of the asymmetric conflict era.

For decades, USA spent billions of dollars to ensure minimal losses in all types of confrontations where it participated. It is said that during the Vietnam War, for each Vietnamese soldier killed, the costs were averaging to hundreds of thousands of dollars. Closer to our days, during the first Gulf War (and equally during the first part of the second), through the Power doctrine – massive bombardments from a distance – USA hoped to bring losses close to zero, inside a symmetric war. The superior weaponry and troops, supported by intelligent, last generation equipments, carried by aircrafts,

were able to guarantee such results by causing massive destructions to its opponents.

Beginning with 11 September, the asymmetric political scenario, prophesied by many American strategists years before, made its way in. The attack fell on the precise spot where the American pride could be hurt most seriously – the Pentagon and the Wall Street. The leadership in Washington, willing to adapt to an evolving, globalised world, introduced a revolution in military affairs, known as RMA.

Conceptualisations

There are *two distinct concepts* related to the understanding of the concept of asymmetric war in American view. The first is connected to the notion of "*fourth generation of war*", *the non-state or asymmetric war*, carried by an enemy without a state base, but backed by an ideology or a religion.

For United States, asymmetry means Osama Bin Laden and other international known terrorists, mafia organisations and drug dealers. However, the concept equally refers to non-state actors, such as those confronted with in Somalia, Kosovo or Lebanon. Those analysts that believe the future to be asymmetric propose a rethinking of the usefulness of war aircraft that costs million of dollars and of the sea bombardiers, given the reality of those circumstances that allowed two people in a boat to kill, in 2000, 17 soldiers and destroy the navy USS Cole (to give just one example).

The second concept of the military revolution materialised in *the anti-missile shield project, Star Wars*, designed to protect America from any ballistic missile that could enter its air space, carrying biological or chemical weapons. As there has been a concerted international public reaction to reintroducing proliferation policies, the Bush administration explained that this shield was not to be built against another nuclear power, but against rogue states or, worse, against non-state groups, capable to send missiles towards the American soil.

Both approaches as well as those who believe in their effectiveness seem to converge in their support for a coherent strategy to fight an asymmetric enemy. A series of questions arise: who, except Bin Laden, could be the enemy? Not the mafia and the drug dealers – open conflicts do not benefit businesses. Unless he knows precisely that United States intend to bomb one rogue state, why would a leader decide to attack America, knowing that they will be punished – as Libya or Iraq had been? To which extent did the Americans create new enemies and how dangerous are they? In which way is this kind of terrorism different from the one afflicting the Arab and some European states in the past 20 years? Is this difference qualitative or rather quantitative in nature?

Defining Asymmetry

We will begin answering these questions by trying to clarify the conceptual difference between *asymmetry* and *bi-symmetry*. The latter represents the *quantitative difference*, measured in both armament and military force, between a powerful state and a weaker one. To exemplify we can look at the recent US (and allies) versus Iraq case.

The asymmetry though, is defined as the qualitative difference between the available means, the values and the style of combat of a more powerful state, and that of its enemies. When a power such as the United States insists on its preponderance in global matters, while equally on the conventional weaponry, the disadvantaged enemies will seek the use of asymmetric non-conventional arms in battle, thus avoiding the strong points of the former and concentrating on its weaknesses.

2. A Sociological Explanation on the "why's" and "how's" of the Rise of Asymmetric Enemies

The Emergency Response and Research Institute – ERRI of the United States published, in the winter of 1999 a report in which it analysed the nature of global conflicts. The conclusions of the research indicated a general mutation inside the

classical paradigm on the way in which conflicts will occur in the future.

This mutation is more of *form* than of *substance*. At that date, the predictions made by the specialists indicated that mass violence, deaths and wounded people will continue to occur, but that these events will happen in places and ways different from what we traditionally know. This prediction turned out to be true during the 11 September events and continued to do so.

A worrisome fact is that states previously known as stable are experiencing religious, ethnic or other types of conflicts, while the numbers of separatist movements are on their way to divide countries into smaller and more ethnically concentrated areas. Some of these conflicts find their roots in ancient times and provided reasons for war for hundreds of years. Others have ignited only recently and represent the result of demographic modifications, regime changes or mutations in the religious or ideological patterns of a certain region.

If we add to these factors the internal disruptions of political or ethnic nature, caused by vicious economic circumstances, as is the case in the regions of South-West Asia, Far East, Africa or South America, we get an explosive mixture that will certainly fill in the conflicts of the future period with the necessary discontent.

One exotic statement that was made regarding the mechanism of originating terrorist organisations affirmed that it resembled, from a functional point of view, the genesis of viruses or bacteria suffering natural mutations in time, in order to resist the effect of antibiotics and other adverse conditions. Similarly, terrorist methods suffer alterations of form through which they come to survive and project their newly acquired abilities on the weaknesses of the opposing structures[1].

Religious and Ethnic Sub-Cultures and the Formation of Asymmetric Groups

Global traditional societies contain myriads of subcultures based on ethnic, religious, cultural or ideological believes – all very strong. When more such sub-cultures interact, the newly generated sub-cultures proliferate in a manner very similar to the one in which live cells generate other live cells to the point of creating a new organism. The structural integrity of a society thus becomes ever more complex.

Most dangerous ideologies from pre-modern era are fighting to keep their dominant identity inside their own sphere of interest. Due to conflicting ideologies, many societies did not experience the coagulation of a real religious diversity. This is the reason why the concept of vertical religious and ethnic integration did not allow for a horizontal migration and a fractional polarization of the society.

The mechanism above-mentioned presents a dynamic explaining ethnic rebellion as a fractal sub-culture, fighting for inclusion based on a conflicting agenda. This situation resulted in ethnic and religious migration towards new geographic or political sites inside a society.

After centuries of continuous discrimination, colonisation and incessant manipulation of sub-cultures, the diversity resulted in being, in many cases, restrained, while the leaders continue to rise with the help of ideologies or dangerous systems of leadership. Any perceived threat to the given ideology will be resisted against, repelled, threatened or even treated with a formal agreement, while the status quo is not changed.

In some cases, a primitive type of "pre-emptive defence" is used, with the purpose of eliminating the insubordinate fractions. In this way, the dangerous ideology is propelled from one generation of leaders to the next, while those considered unskilled or subject of contempt are manipulated, overlooked or simply ignored. This sort of marginalizing is the most oftenly-encountered reason for violence.

This could be, briefly, the mechanism through which individuals and groups of asymmetric types are formed, with all the frustrations arising from their position as under-privileged, of scorn towards certain structures inside the society. Such people and groups are rapidly propagated in the international affairs, especially given the status of global village of the present world.

3. *The Methods of Asymmetric War and the Types of Asymmetric Enemies*

The methods (weapons) most frequently used by asymmetric enemies in the attempt to gain a position of force in relation with the more powerful opponent are:

- *Threats from multiple and simultaneous sources* – there are fears that non-conventional acts of terrorism could be accompanied by electronic attacks, or attacks on the infrastructure that could cause losses to the commercial communication and information systems, military or governmental.
- *"The battle for hearts and minds"*, as it has been called – in the post Cold War era, the main opponents of US power such as Saddam Hussein, Ayatollah Khomeini, Fidel Castro or Yasser Arafat discovered that they can gain the hearts and minds of people by using psychological techniques (known by the specialists as Psy-Ops), which employ the use of selective information from the reality, disinformation, press manipulation and propaganda.
- *The psychological impact of weapons of mass destruction* – a worrying tendency signalled for the first time in the 90's indicates a mutation in the philosophy of detaining this type of weapons, from the need to deter the opponent, into using them as alternative weapons in the benefit of military powers previously considered of lesser influence or even for the use of non-state groups.
- *The effects of economic terrorism* – a new generation of terrorists, considered "enlightened", discovered recently that the way to chaos and fear among populations can be easily achieved through large scale attacks on economic targets or infrastructure, thus determining a general state of decadence of the society and creating the premises for popular civil unrest and consequent uprising.

In the light of the differentiations shown above, resulting both from the synergy of the specific elements born inside the society, as well as from the specific ways of combat, we could classify the asymmetric opponents as follows:

- *Large states in transition*. From the American perspective on the potential asymmetric opponents, this possibility is less likely to occur in the immediate future, given the difference in capabilities between the USA and the rest of the world, in what the support of a conventional conflict is concerned. Presently, the most "plausible" candidates for conflict (and even those, little probable before the end of this decade) could be China, Russia and India.
- *"Rogue" states*. There is a largely shared view among strategic analysts in the USA that states such as Iran, Syria, Iraq (until recently) or North Korea, will try to acquire nuclear or conventional equipment with long range of action, in order to become, by the end of the first decade of this millennium, a real challenge to the supremacy of the USA.
- *"Failed" states*. The local insurgencies in Somalia or Chechnya, led by local charismatic leaders, brought the American or Russian armies in embarrassing situations. With the rise in violence in the urban areas around the globe, the conflicts of the future are more likely to occur in the cities, than outside them. By hiding among a population that often shares their views, urban guerrilla seems to offer a coherent strategy of terror to US opponents.
- *Trans-national criminals*. The phenomenon of trans-national criminality has turned, for a long time already, into a global one. The potential fears related to its rise refer to the fact that some states could choose to use internal criminal networks in a symbiotic way, in order to support action that could undermine the economies of industrialised democracies, without determining any response from their behalf. The cyber space could prove to be an attractive arena for carrying strategic criminal campaigns.
- *Terrorist organisations*. Considered the most fierceful foe of US today, from the point of view of the losses produced, the terrorist organisations and networks from around the globe seem to prefer this country as their main point of focus. This indicates that future conflicts, at least in the medium term, will not entail traditional confrontations with massive troops involved, but rather limited fights with small terrorist units of fanatics, some using even non-conventional armament or other

sophisticated tactics and strategies. Such is the present situation in Iraq or Afghanistan, where, although large numbers of equipments and troops have been displayed across a large territory, the battles are being carried around limited spots and the weapons and tactics of Allies' adversaries are those foreseen by specialists.

4. *Elements in the US Foreign Policy Susceptible to Create Premises for Asymmetric Conflicts*

As stated in the beginning of this paper, a special attention will be granted to the issue of finding evidence as to how the main lines of American policy in the world determined an exacerbation of the anti-American feeling and led to developing specific forms of asymmetric combat.

For specialists from both US and outside, many of the realities of asymmetric conflict are the result of inadvertencies and inadequate adaptation of the US foreign policy to the post Cold War era. Such policy may prove to be more detrimental to inspiring order among the participants to global games than to deter enemies, while it seems prone on *raising antipathies* of the international public opinion, as well as *vulnerabilities* in constructing the American defence structure.

a. Inadequacies in adaptation and raising antagonism

Many analysts consider that the events of 11 September 2001 were not the result of an anomaly, but a predictable phase induced by the stress of changes in international environment. This could thus be explained by inertia in adapting the type of response fit for the Cold War period, not recognizing the political and institutional realities of the period after 1990.

The rivalries among great powers was a comfortable state for the political and military elites from Washington, as in this type of world the action and reaction were predictable in nature. The population of the country was made to feel safer not by adapting to the asymmetric types of threats that occurred, but by acquiring intelligent weaponry and systems, extremely sophisticated and expensive.

More recently, the letter signed by 200 professors in International and Strategic Studies from all American Universities warned president Bush on the risks induced by his foreign policy.

The Department of Defence continued to follow this policy after 1990, advancing the idea that US security depends on accumulating more arms and securing the space. This did not entail that the country need not prepare for this type of attacks, but that many political and military leaders used this argument in excess, in order to justify the preservation of a certain type of military structure, of the personnel, and armed systems and, not least, to protect the interests of the providers of defence systems and of the military bases abroad. In fact, many specialists consider that the new arms race and the ballistic missile shield do not respond to the real security needs of the state.

For years, all serious considerations on the possible threats to US mentioned the probability of terrorist attacks sponsored by states or non-state actors. In 1999 a Commission, called Hart-Rudman Commission, was set up inside the Congress and analysed this issue. The conclusions were that "for the future, massive investments in the scientific or industrial infrastructure of small states, groups, rich individuals, criminal syndicates or terrorist groups will no longer be necessary in order to get hold of dangerous technologies."[2] The Commission further proposed that "states will purchase weapons of mass destruction, and some will even use them. Most probably, Americans will die on American soil, possibly in large number."[3]

Familiar with the concept of power acquired during the Cold War and the global domination, the State Department and the Department of Defence developed the rhetoric of "rogue states" and argued that the best protection against terrorism was the anti-missile shield.

Obviously, the question that arose and that saw its material proof in the 11 September

attacks was why would terrorist organisations spend money on building such missiles, when commercial air transport was providing an equally effective means, with much cheaper navigation skills. The evidence thus proved that the expansive and expensive super-structure of the United States was not well tailored to the new global threats and as such vulnerable to new political competitors.

The Islam Issue

Probably the most obvious element in the antipathy for US is represented by its policy towards Arab world, both in supporting Israel in the Middle East conflict, as well as in promoting a policy in the area that led to frustrations of the religious Muslim feeling.

One US decision that created unrest among the Islamic population was the sending of half a million American soldiers in Saudi Arabia in 1991. According to official documents of the US Army, "the Saudi kingdom requested emergency assistance from United States, in order to offer protection against ballistic missiles threat on their country. The US Army responded immediately by deploying two artillery battalions for defence from Europe, with a leading brigade."[4] The 7000 soldiers were expected to remain only temporarily on the Saudi territory, but ten years later, at the moment of the attack on WTC, they were still there. Their presence gave room to vivid discussions in a population highly sensitive about Islamic culture and religious purity, as well as national sovereignty.

While press and strategists were raising question marks on the pertinence of deploying 3000 American soldiers in Bosnia, a similar question was not asked about stationing troops in Saudi Arabia. When asked whether question marks should exist about a military presence eroding the legitimacy of Saudi leaders in the eyes of their population and radicalising Islamic fundamental views against United States, the pervasive answer of American administration remained that American troops were helping stabilise the region and protect it from a possible Iraqi attack.

Analysts often commented that the degree of Soviet subordination of the culture and identity of the peoples found under its sphere of influence led to the radicalisation of the population in these areas. Asked whether the same phenomenon could be encountered in the countries under American influence, as, for instance, Japan or Saudi Arabia, the former deputy Secretary of State, Strobe Talbott answered that the American troops are stationed abroad as "stability anchors" and not as coercion forces. The reality seems though to show that America still needs to provide a *raison d'être* for its troops, as a total pull out would have been difficult to achieve at the end of the Cold War. Besides, the outstanding conflict in Iraq brings new elements to support on-going presence in this part of the world.

In spite of its status of international pariah, the words of Osama Bin Laden are providing useful information on the perceived power of the United States abroad and so are being carefully analysed by experts to understand the view of the radical and extremist movements. Many of the influential elites of the United Arab Emirates, Oman or Kuwait – all of them states found under US protection – share his opinions. In his book "Holy War Inc.", Peter Bergen quotes Bin Laden as saying: "The collapse of Soviet Union made United States more arrogant, regarding itself as the master of the world and to establish what they call the new world order. United States created today a double standard, naming anyone who dared raising against its injustice a terrorist. They wish to occupy our countries, to steel our resources, and impose their agents to lead us...and want us to agree with all that."[5] This opinion seems to be shared by many leaders of developing nations and, to a certain degree, by some leaders of the developed nations (to exemplify, see the recent discontent over the Iraq intervention issue inside the United Nations).

The Israel Lesson

Before analysing the other component of the asymmetry of conflicts between US and its adversaries, we will dwell for a brief while on another extremely sensitive issue related to the roots of the anti-American feeling, namely the Israel problem. Given its unconditional support for Israel policy in the Middle East, as well as adopting specific attitudes in its relation with potential foes, United States tends to attract the same type of reaction as Israel does from the part of Arab countries.

Most writings in the literature on asymmetric conflicts concentrate on United States and, since the outburst of the second Intifada, on Israel as well. The two states worked closely together in some programs such as developing anti-ballistic missiles "Arrow". The Israeli fighting style, especially in West Bank and Gaza strip presents great interest for the American specialists, who detected asymmetric elements in the wars carried by Israel.

In a book called "How to Fight an Asymmetric War"[6], general Wesley Clark, the commander of NATO forces in Kosovo, explains the way Palestinians in Israel learnt to resist using non-lethal means. They use a tactic meant to exploit world sensitivities, forcing Israeli troops to overreact. On certain occasions, they used armed people placed in the middle of the stone-throwing crowd to reinforce the non-lethal forces, or even terrorist bombings. To answer with fighting planes, tanks or artillery in such situations was impossible. To answer with infantry posed too many risks. No society is more cautious than Israel to accept losses, which pushed the country to develop new equipments, new forces and new types of tactics. In order to defend its borders, Israel deployed more tanks and transportation vehicles for troops, acquired Apache helicopters, ground-guided aircraft and high fidelity optical devices. In order to protect itself internally, Israel produced plastic bullets for infantry, as well as riot-control equipment. Special security troops have been trained to ease the work of the conventional units in charge with maintaining order.

Although it may seem extremely convincing, the ability developed by Israel in the fight with the asymmetric enemies has its own perverse effects that led, as could be noted, to the proliferation of violence and the creation of a vicious circle, difficult to overcome at this point in time.

This only contributed to providing extremist Islamic groups with yet another reason as to why the strong support given by the US to the policy of this country makes the former extremely unpopular among the Muslim population from the Middle East. Experts appreciate that since the beginning of the application of this approach on asymmetric conflict, nearly 2000 Palestinians have been killed and thousands wounded (in the period 29 September 2000, beginning of Intifada and 15 September 2004)*. In the absence of a political or diplomatic option, force did not manage to improve security.

Analysts of the International and Strategic Studies in Washington suggest that Israel forced the Palestinian Authority to oppress its population and reduce democratic liberties in order to maintain stability. When the Intifada continued, Palestinians found themselves in front of two options: peace with violence or war.

b. Vulnerabilities

Many analysts consider that the most important impact of 11 September was felt on *America's perception of itself and its role around the globe*. What the terrorists from WTC managed to do was to put an end to the geo-strategic advantage the United States had before. Separated by the rest of the world through two large oceans and blessed by neighbours such as Mexico and Canada, the US territory remained for centuries untouchable by external threats.

Few great powers in the history benefited from such geographical circumstances. They had to live with their chick next to the jaw of an aggressive neighbour, having its own ambitions as great power.

United States found themselves under attack only during the Pearl Harbour episode, in 1942, but Hawaii was thousands of kilometres away from the mainland. Last time when this needed defence was in 1812, when Great Britain plundered Washington D.C. The luxury of a secure internal space ended for US on 11 September, when events turned them, from this point of view, into a normal power that had to defend its territory.

The new conditions of domestic vulnerability had two profound effects on US: one on the external plan, the other on the internal plan. *Externally*, the debate between isolationism and internationalism – a recurring feature of American policy – is now belonging to the past. USA do not have an option whether to behave as a solitary citadel on the top of the mountain, immune to the dynamic of international politics. *Internally*, US benefited from the existence of the most vivid civil society. Without threats inside their frontiers and with an immigration culture, US could afford to encourage manifestations of liberty and welcoming attitudes towards coming from outside. The only recent exception to that was the McCarthy period in the 50's, when US had to adopt previously unacceptable practices in order to solve their communist problem at home.

Presently, the Bush administration imposed drastic measures to answer the threats to internal security coming through immigration. For the first time, America is confronting the *dilemma* that other democracies had to face long before, that of *keeping the balance between the imperatives of constitutional liberties and the operational necessity of ensuring internal security.* "Unorthodox" methods or prevention and warning have been adopted, which were considered unacceptable or unconceivable before 11 September. For example, less than one week after the WTC events, the American Congress raised the interdiction to assassinate foreign leaders, making room in this way to a potential new wave of violence.

On a military level, the US is exploring doctrines that go beyond the concept of defence, in order to postulate the necessity of a *preventive* policy or even of a *pre-emptive* one, in order to be able to answer those elements that cannot be withhold otherwise. Such measures have been already applied to Saddam Hussein at the beginning of the present Iraqi conflict.

Moreover, as US itself admit, even the united forces of the great powers will not be able to oppose successfully its combating capacities in the foreseeable future. There was little step from this acknowledgement to the idea that US could use this huge advantage of power *to pursue its interests unilaterally*, without consulting or cooperating with other major powers in order to maintain world peace and security in the new millennium, which could be experienced during the recent debates on the Iraq intervention.

The Bush administration equally restored the idea that it is the duty of Washington to make sure that a *new potential competitor* or a combination of such, that would question American supremacy, was not possible.

In what economic vulnerability is concerned, this has already been felt during the 80's, before the dissolution of the Soviet Union and the end of the Cold War. During the presidency of Ronald Reagan, the costs of maintaining the army already caused economic and politic discomfort. In addition, these costs did not exclusively represent the counter-price for people and weapons, but equally the special terms of commerce offered by US to its allies in Europe and Asia in order to maintain its military personnel. A notorious example is the case when Japan and US closed a deal, in which the latter offered preferential and unlimited access to American markets, in exchange for American troops stationed on the territory of the former. From its very beginning, the deal was not concluded on the principles of a free market economy, but on the pragmatic needs of US to protect its assets from an eventual Soviet expansion.

Around the year 1985, US have already become the greatest debtor of the world, while Japan was the main global creditor. Under political pressure, the Reagan administration had to invent a whole mechanism of financial manipulation in order to oblige the dollar to depreciate with 50% in relation to the yen, in

order to give a new impetus to the American economy. The intervention on the exchange rate pushed the trade balance of the US created the premises for a massive wave of Japanese investments in the American economy that doubled their value. When the ground under the presidential palace in Tokyo became more valuable than the state of California, it became obvious that the markets were not functioning correctly. The earth shaking events of September 1985 foresaw the end of the Cold War, as the costs of maintaining its might were becoming politically and economically unsustainable.

During the same Cold War, US and USSR forced the world to choose on whose side to play. They conceived a spiral of commerce, aid, military presence and diplomacy in order to keep different nations in their spheres of influence. After the disentanglement of the Soviet Union, the cost-benefit balances of the countries found in the American sphere of influence changed dramatically. In the lack of Soviet threat, the wish of US to absorb the costs for keeping its own influence alive modified, and question marks started to arise on the pertinence of world economic system established by the US itself after the end of the Second World War. Many analysts consider the Asian crisis more a result of imposing neo-liberal mechanisms of the Bretton Woods types of organisations on countries found under development, which were not ready to accept them. Few believe that this was due to the incapacity of these countries to govern or to the primitive type of capitalism they were promoting in economic relations.

These are some of the arguments to show that the external policy of the US immediately after the end of the Cold War, characterised by a certain inertia in action and a structure tailored to the challenges specific to those times, led both to raising antipathies, as well as to a dwindling of the power structure in the US, by inadequate adaptation to outside conditions, which led to a raise in the risk of exposure to various threats.

5. *Types of Asymmetric Threats*

In accordance to the types of vulnerabilities signalled in the American structure of power as explained above, we may identify a classification of the types of asymmetric responses that were given or could be given to US by its enemies:

- acquiring weapons of mass destruction:
- selective purchasing of sensors, hi-fi military communications and systems (strategy knows as the "niche player strategy" – avoiding direct confrontation by raising the costs of a conventional intervention[7])
- exploiting cybernetic weapons;
- choosing as war theatre the city or the jungle in order to degrade the enemy's capacity to seek and find significant military targets;
- economic strategic war against the economic private interests of US citizens.

The Strategy of Fighting Without Rules

The Pentagon affirms that the new enemies are not fighting with honest means; their strategy, based on the global world, uses all the sophisticated modern means: of communication, transport, information, psychological terror, international mass-media and the Internet. Their arsenal equally includes knives, fishing boats, homemade explosives or civil airplanes. As it could be seen, they work. And even if these enemies have to have a base somewhere, no permanent location could be associated with their name, as they do not have a home, and the networks are dispersed. The worldwide is their address, as well as the operational area.

The asymmetric enemies have a common interest: weakening the sovereignty and strengthening the forces on the international markets. From this point of view, they are said to resemble McDonalds, CNN or AOL. They all are speculating the grey areas of the global world, the shortcomings of the legal systems in order to maximise their profits and escape

the accounting of their activities by constitutional or democratic powers.

In this sense, we may say that the asymmetric actors are creations of the neo-liberal version of the globalisation. They have a space of manoeuvre larger than the one of the states. This is why newspapers described Osama Bin Laden not only as an Islamic politician, with roots in a certain type of society, but also as a representative of a new, cosmopolite Islam, posing a threat to the whole world (similar to the Islamic movement led by Hassan al-Turabi, now in a prison in Sudan).

By the methods used, similar to McVeigh from Oklahoma City in 1995, Bin Laden used the information revolution in his own advantage. They both have realised that the little can generate gigantic effects and the powerful are often oblivious to the possibilities of the small.

By Way of Conclusion

We can thus see that the strategies against the new type of enemy – the asymmetric one – concentrated on the need of developing new weapons, with maximum power to kill. Intelligence services have been strengthened with surveillance software, spy satellites, but also with human spies. In the typical police work, racial profiling is now recommended. Strategists wish to be able to extend spying to the potential sources of support of their foes, hereby including the NGO's, charities, ex-pat communities, and Internet sites. In one intervention in the Congress, a Senator complained that CIA replaced the State Department in the American diplomacy[8].

From various points of view, it may appear that the Bush Administration inclines towards an approach for the asymmetric threat similar to the Israeli model. The consequences could be serious.

The grey zones of the planet, created after war, globalisation and poverty are areas with a high potential of danger. Public institutions and development are more necessary to these grey areas than military interventions.

The events of 11 September reflect a transformation of the world that we need to understand deeply. The answer so far offered by America reflects a strategy of imposing an international security system built and implemented in its own favour.

The victories recorded by US so far in the war against its asymmetric adversaries could foster a type of situation – as happened after the first Gulf War: a radicalisation of the Islamic extremist groups. The new asymmetric enemy will not be defended by force, in the lack of an adequate political project, able to accommodate the specific needs of those populations that are generating such kinds of anomalies.

NOTE

[1] Clark L. Staten, "The Evolution and Devolution of Terrorism; The Coming Challenge For Emergency and National Security Forces", published in *Journal of Counterterrorism and Security International*, winter, 1999, page 27.
[2] "Road Map for National Security. Imperative for change", conclusions of the Hart Rudman Congress Commission, January 2001, page 78
[3] "New World Coming – American Security in the 21 century", Publications of Congress, Washington DC, 1999, page 243
[4] "Official History of the Third US Army", citat de Steven Clemons în "United States: all-powerful but powerless", apărut în *Le Monde Diplomatique*, octombrie 2001
[5] Peter Bergen, "Holy War Inc", Rockefeller Center, New York, 2002, page 233
[6] Wesley Clark "How to Fight an Asymmetric War", *Time Magazine*, october 2000, page 37
[*] Estimations differ from nearly 3000 according to Palestinian sources, to nearly 2000 according to Israeli sources
[7] "Asymmetric Threats" in „Engaging power for peace", *Strategic Assessment 1998*, National Defense University, Washington DC
[8] "An enemy with no forwarding address", Marwan Bishara, *Le Monde Diplomatique*, October 2001

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BOOK REVIEW

Antoaneta Olteanu – ***Homo Balcanicus, Characteristics of a Balkan Mentality***, Paideia Publishing House, Bucharest, 2004, 128 pages.

An excellent work of a real scientific value came to enrich the editorial landscape, we talk about **Homo Balcanicus, Characteristics of a Balkan Mentality** by Antoaneta Olteanu, a well established name in the European ethnology and anthropology.

It is a very useful book, opening ways to a dialog between people of culture, both in the Balkans as well as in Europe, on what today has pejorative meaning (synonym with excess, violence, intolerance and terrorism), rather than with a cultural landmark and civilization – the Balkans. The distinguished author renews a tradition of the Romanian Culture through **Homo Balcanicus** and, at the same time, she opens a dialog on the Balkans. Her scientific discourse is useful, because, in 1989, the Balkans were the place were a lot a tragic events took place which apparently cannot be explained, but at the same time confirm the historians' conviction that the Past, at least in this part of the world, repeats itself.

Reading **Homo Balcanicus** you get accustomed with the spirituality as well as the mentalities and stereotypes of this region. The author reaches the conclusion that we deal with old spiritual heritage, which can be found in all the peoples living in the Balkans. Antoaneta Olteanu's research included her travels in Bulgaria, Greece, Turkey and Serbia; they led her to a conclusion which makes her a voice apart from the other annalists of this phenomenon. Bringing historical, geographical, linguistic and ethnological arguments she sustains the idea that there is a Balkan mentality, a Balkan conscience, although most of the historians deny it. The inhabitants of this region don't like to define themselves as Balkan people, especially the Hungarians and the Romanians.

The excellent case study (page 71-89), dealing with mentalities and stereotypes in the Balkan peninsula, brings the characterizations of the Albanians, Bulgarians, Greeks, Macedonians, Turks, Romanians, Croatians and Slovenians using the point of view of the theory of the image of the other. These aspects bring the author closer to another specialist in historic imagology, Maria Todorova, but, at the same time, detach her from the latter through her force to find her way through "the labyrinth of symbols" out of which the ideological foundation of the Balkans is made of. In spite of the emotional impact on the learned traveler which is Antoaneta Olteanu, her scientific research always takes into account the diversity and the individual picturesque of the regions she investigates. In this mixture of more or less harmonized ethnical ingredients, the author succeeds in underlining the essential and the general: "besides the exotic landscape and the people which strike the traveler, I soon noticed the common characteristics. Although they are modern and integrate themselves in the European framework, old influences are well assimilated by the Balkan cultures." What characterizes a Balkan inhabitant? He belongs to many nationalities because of his ethnic, mental and spiritual structure; he is able to be related with the others (pg. 61) because he can adapt his own identity to the identities of the others. In a turning point space, always defined by movable frontiers, by different languages and religions, Antoaneta Olteanu identifies a few zones of dialog, real representative institutions for "Homo Balcanicus" whether he is a Bulgarian, a Turk, a Greek or a Romanian. The market and the coffee shop are typical oriental elements that characterize the Balkan populations. As typical examples we can mention the great bazaar in Istanbul established by Muhammad II after the conquest of the city in 1543. In 1660 the bazaar of spices was build. Beyond the fabulous richness, the magic of the goods, the author mentions the colorful show of the Balkan trade,

namely two of its characteristics: bargaining and tip. For Greeks and Turks the pleasure of selling goods disappears if there is no bargaining. The seller and the buyer take part in an active tradition, based on a conversation animated by the former wish to sell and the latter desire to hoax the seller, obtaining a good price. (pg. 23)

The same characteristics are found by the author, when she analyses and compares the Balkan architecture, music, gastronomy and clothes. A common vision on life is shared in the ritual system, as well as in beliefs like **"martisorul, sorcova, caloianul, paparudele and calusarii"** that can be found in all the countries of the region. The author rightfully sustains the existence of a Balkan Mythology (pages 33-47) even the existence of a common Balkan epos connected to the traditional songs (Christmas carols, wedding and funeral songs and those dedicated to the agricultural works).

The amplitude of this work and the scientific method come from a multidisciplinary approach of the Balkan phenomenon. The geographical, historical and sociological studies are harmonized and thus the work is complete. (The chapter "The World of Stereotypes")

Homo Balcanicus is original because it tries to deal away with stigmatic elements that are used as a rule in characterizing the Balkans and the Balkan peoples. There had been and still exist a part of European society that sees in the Balkan region only decadence, regress, religious and ethnic fanatics as well as other "sins" (page 91). This assumption makes the author to allocate a very important part of her work to the comparative analyses of the Balkan region, seen from the inside, as well as from central Europe (page 91-97). The book reopens the discussion on the old dichotomy East-West: "For the Byzantine world, the center of civilized European world, after the fall of Rome, the West stood for barbaric customs and regress; but the fall of Constantinople lead to the disappearance of Eastern values ... the Westerners erased all that was good in the Byzantine civilization: the diplomacy of peace and the culture" (page 96). The author identifies certain kind of a discourse meant to identify Byzantine world with the Balkan world. "As it generally happens with stereotypes, their origin consists of the unwillingness to known the realities of this part of the world", the author says. The western world looks at the Balkan peoples through a deformed mirror, a stereotype. The worst is yet to come, the author underlines. The Balkan communities deny their traditions because they want to be recognized; in doing so they take over western values although not all those values are real ones, or can be adapted to the traditional values". The author concludes that as long as the people living in the Balkan region deny their origin and like to be seen as Europeans instead of the barbarians at the gates of Europe, there will always be conflicts and misunderstandings. Although the process of globalization is undergoing, **Homo Balcanicus**, a book that stands for itself, is a turning point in reflecting the image of the other and the image of our own self. We, after all, are the Balkans.

Ecaterina Căpățână

Simona Ştefănescu– ***The Media and the Conflicts***, Bucharest, Tritonic Publishing House, 2004

In an era when the media have grown to be one of the most dominant forms of culture – so dominant, in fact, that they can now be seen as the pinnacle of commercial culture – an explanatory theory of the relationship between media and the conflicts becomes a paramount. Yet considering the intimate relationship between conflicts and the media and that, for many, the media have become their culture, a theory that views the media outside the context of culture will be afflicted with myopia. Thus, for completeness, a theory of the media requires a firm connection to reality in its every step. Though, considering the strong connection between national and international conflicts and the media, it was necessary such a study as "Media and Conflicts" to make some useful connections. Walter Lipmann said: "We must remember that in

time of war what is said on the enemy's side of the front is always propaganda, and what is said on our side of the front is truth and righteousness, the cause of humanity and a crusade for peace".

Probably every conflict is fought on at least two grounds: the battlefield and the minds of the people via propaganda. The "good guys" and the "bad guys" can often both be guilty of misleading their people with distortions, exaggerations, subjectivity, inaccuracy and even fabrications, in order to receive support and a sense of legitimacy.

The book comprises three parts, structurated in eight chapters.

After making a few conceptual observations, the author concentrates on presenting the theoretical aspects of the relation between media and the conflicts. There are some theories which should be mentioned in order to incite the public to read the book: the theories referring to mass media as "extentions" of the state in crisis and conflict situations. John Keane and Douglas Kellner affirm that the paradigms of the freedom of communication have to present the statal point of view and its role in forming the public opinion.

The second theory refers to mass media as the main instrument of preserving the social order.

Other theories see the crise as a media product or analyze the changing and contradictory role played by the media in a situation of crise.

Generally, the journalists sustain that they present detached the facts, but, by reconstructing the news, they add a personal note to their commentaries. Beginning with the Gulf War (1991), the military conflicts became the most mediatized events.

All these theories presented by Simona Ştefănescu are put into practise in a case study. She has chosen the conflict from the ex-Yugoslavia (1991-1995). It is our oppinion that the author has that option because here we can meet "revolutions" that had overthroned communism, coupes d'État, terrorist acts, inter-ethnical conflicts, inter-confessional and international conflicts. The conclusions drawn by Simona Stefanescu underline that the role played by mass-media during this conflict is hard to be established because of its multi-dimensional and unique nature.

This case study is well illustrated by lots of diagrams and plates for a better understanding of an extreme complex situation.

The American senator, Hiram Johnson (1917) said: "The first casualty when war comes is Truth."

The author makes an ample analysis of the conflict in ex-Yugoslavia. We noticed that she emphasizes "the image of the other" and the way in which the peoples taking part in the conflict saw themselves and the way in which they perceived the other participants. Mass media was the means of directing those perceptions.

The second case study reffers to the conflict in Kosovo (1999). The form of presentation is concise. Kosovo is a muslim island sorrounded by an orthodox sea. The conflict was not only the subject of "live" transmissions, but also the theme of many TV documentaries. These movies presented the reality as it had been perceived by the reporters that made them.

The conclusions drawn by Simona Ştefănescu are very important for the content of the book: "I consider that this research is able to open an interesting perspective on the mediatic coverage of a conflict, in general...The analysis of the mediatic coverage of the Kosovo conflict reveals semnificative differences between different newspapers and televisions, from the viewpoint of their neutrality or of their lack of neutrality. The media gave birth to certain stereotypes, prejudices and representations that built a reality that rarely reflects the truth.

The lecture of the book rises the interest of the reader, but a researcher will feel the need to go beyond this volume and to deepen the analysis. I am convinced that more and more studies will deal with the same theme, which is very actual and cannot be dealt with in just one volume.

We live in a dirty and dangerous world. There are some things the general public does not need to know about and shouldn't. I believe democracy flourishes when the government can take legitimate steps to keep its secrets and when the press can decide whether to print what it knows.

In democracies, people like to believe that they and their countries are generally good, for if it was any other way then it brings into moral question all they know and hold dear. The histories of some nations may have involved overcoming adversaries for legitimate reasons. Such important history is often recounted and remembered as part of the collective culture of the country and those same values are projected into modern times. Mass media sometimes work by creating the fear of losing such cherished values.

Vlad Alexandrina

***Romanian Journal of International Law* – The Association for International Law and International Relations,** year I, number 1, October 2003, Bucharest.

The first issue of the Romanian Journal of International Law is a truly remarkable event. Not only because it is the very first publication of this kind in Romanian exclusively dedicated to International Law, but also because this journal has the significant of a new start for the Romanian School of International Law.

Having solid and bold developments of the Romanian doctrine of International Law is not just important from academic point of view. Historically, the Romanian scholars – some of them also play important roles on the international arena as diplomats or high level politicians – brought valuable contributions to the progressive evaluation of International Law principles, concepts, institutions, norms and standards.

The beauty of International Law resides in combining at the same time, idealism and pragmatism, both values and instruments, both policy and pure legal reasoning – sometimes in a very delicate balance.

The first issue of review includes the following parts: essays; the second – Commentaries upon the working sessions of the international bodies in the field of international law; – Recent events; – Commentaries on case law and legislation; – Restitutio – Great contribution of the Romanian School of International Law in developing Public International Law; – Book review; – Ph.D. candidate's contribution.

"It is being said that we wish to be governed by International Law, yet the world is passive witness to its repeated violation ". This is what Nicolae Titulescu was thinking sixty-six years ago, and we believe that his role, the function, the principles and concepts themselves, and even the prospect of International Law are – more than ever – put under the pressure of certain legal factors presented in the essay of the Professor Adrian Nastase and Ph.D. Bogdan Aurescu "The strategic role of international law in contemporary international society" of influence that tend to avoid, ignore or to subordinate International Law to particular political interest.

Taking into account this feature of International Law – relating international relations by obliging the International Law subjects to follow a certain, conduct, and thus respecting important values of the international society – one could conclude that this regulating role of IL is very closely connected to a concept of security and stability of the international society, in a broad sense. IL is supposed to be the "guardian" of the International Public Order, and to avoid anarchy in international relations.

The contemporary system of norms of International Law was crystallized in the half of century between World War and the end of the Cold War on the basis, of course, of the most important pre-existing rules of International Law.

Nevertheless, especially after the end of the Cold War, the international society has suffered, more that before, a lot of sudden and sources of the new pressure on International Law, challenging its existing configuration at the beginning of this new period after 1990. The dynamics of action of these sources determined the symptoms of this new crisis of International

Law, as well as important effects. The most relevant changes of the international society are well known: the collapse of the bipolar system and a new distribution of power, the globalization and the unprecedented growth of interdependence of the International Law subjects which contain, for instance, the concept of sovereignty and the way it is exercised; the prevalence of economics over politics; regionalization and multiplication of regional structures of cooperation; a growing and enlarged European integration process, which might lead to the replacement of International Law by the Community Law; the dissolution of certain States and formation of other on the basis of the will of the international community, which affects the concepts of succession and recognition in International Law; the permeability of borders, the "erosion" or so called "failure" of the nation-States; the unconventional threats to the domestic and international security like terrorism, illegal traffic, which also call for creation of new norms in order to regulate and protect international stability and security.

Either multipolar or unipolar – and perhaps with even more necessity in the latter situation – Contemporary International Relation must be regulated by a modern and efficient International Law. In fact, after 1990, the power was not only redistributed among States, but also to "non-classical" international actors.

International Law should have the capacity to adapt itself to all these radical changes and should respond accordingly to these challenges, so that it maintains its relevance for international security and stability of the International Society.

Recent events on the international scene raised important questions related to the scope and content of fundamental pillars of International Law order, as well as to the inter-relation between principles of International Law. The most important question refers to the legality and legitimacy of the "unauthorized" intervention – the aspect is debated in the study of Ion Gâlea "The theory of intervention from a legal and ethical perspective". At the same time, not only the legal equilibrium of the international society has been subject to question, but also moral and ethical aspects were raised in order to double legal arguments, either for or against intervention. But intervention is not new in contemporary International Law.

The political and legal purposes searched by intervention determined International Law scholars to introduce notions as humanitarian intervention or democratic intervention is not unanimous. If we take the positivist approach, the conclusion appears quite clear: intervention does not comply with International Law. The positivist approach is very attached to the rule of law principle.

The realist approach, although not strictly consistent with rule of principle, has the merit to respond to international contemporary reality, which occurred after the fall of the bipolar system.

A continuous development of international norms against terrorism is of a paramount importance also in front of developing methods and forms of terrorist activities. International community should react in such cases without any delay. The study of Professor Zdzislaw Galicki "International and treaties terrorism" is situated along these lines.

Sixty-six years have already passed since the adoption of the Convention for the prevention and punishment of terrorism (Geneva, 1937) – the first international treaty against terrorism. In 2002, the last comprehensive international legal instrument in this field has been adopted under the auspices of the Organization of American States namely the Inter-American Convention against Terrorism. These two conventions my be considered as the milestones on the road of long lasting efforts of international community of States to create an effective legal response to one of the most disastrous and horrifying phenomena of our times - international terrorism.

The Romanian Journal of International Law has the distinct privilege to present in Restitutio: Vespasian V.Pella – A life dedicated to International Law.

Most of the Romanian and foreign authors of IL* know V.V. Pella as one of the important pioneers of International Criminal Law - he was the initiator of the first Convention on the creation of an International Criminal Law, signed in 1937 in Geneva, and brought a substantive contribution to the development of this new branch of International Law thought its constant contributions in the International Law Bureau for the Unification of the Criminal Law, in the International Association for the unification of the Criminal Law and in many other international for, including before the Nuremberg International Tribunal, in dray 1947, where be presented his new theories on ICL** – which were, in fact, consecrated in the decisions of the first ad hoc international tribunal.

But V.V. Pella was also an extremely gifted lawyer of IL and a very skilful diplomat who perfectly knew to use the instruments of IL to achieve the important objective of preserving peace and order in the international society of that time – between the two World Wars.

Pella was an advocate for the doctrine of the primacy of IL, which is now the dominant doctrine as far as the relationship between IL and Domestic Law is concerned.

It is no doubt that this theory is now the must and widely accepted in the Contemporary International Law, but at that time it was just beginning to spread.

To sum up, this review is a very useful one as it conveys much substantial information and very interesting studies.

Vasilica Mucea

***The Romanian Review of International Studies* – Association of International Law and International Relations,** new series, year I, number 1, Bucharest 2004.

"Habent sua fata libelli" is the Latin aphorism frequently used when we refer to books with a complex destiny. We may say that the periodicals have their fate as well. *The Romanian Review of International Studies* has followed, in one way or another, a parallel road with that of the Association of International Relations (ADIRI) with its moments of creative affirmation, followed by stagnation, up to the interruption of its publication.

The ADIRI relaunching in 2003 has opened new prospect to the Romanian debates and researches, on topics from a large array of international studies. These circumstances have also created the possibility to resume the issuing of the Review, in a new series, meant to mark both the current European and international of Romania in the context of the change witnessed by the political community at the turn of the millennia.

Obviously, the governmental positions of the countries are still important in international negociation but, at the same time, the share of independent thinking and the contribution of the non governmental organizations are increasing.

The Review is published under the aegis of three sections of ADIRI (the Section for European Integration, the Section for International Relations, the Section for the History of the Romanian Diplomatic Relations), the fourth section of the Association – that of International Law – issuing, as it is known, the twin publication *The Romanian Journal of International Law*.

Romania is in a climax period of its process of integration into EURO-ATLANTIC structures, NATO and respectively the European Union. The themes to focus on are the concept of the integration and the negotiations carried out to this effect. Inevitably, in conceiving this issue, the share of those who are professionally dealing with the integration issue, either in the academic or in the governmental bodies is higher. The articles do not express party-minded

* IL – International Law
** ICL – International Criminal Law

opinions, although the authors who held governmental offices have decided to present the "technology" as well as the stages of the accession negotiations to the European Integration.

The opinions presented here have frequently the mark of personal approaches towards issues which have not been finalized yet, where the views and the interests of the community and each state specifically have not been harmonized yet in an ideal manner. Adrian Severin Ph. D. peremptorily affirms in his essay "Challenges and solutions for an enlarged Europe": "unanimity is the recipe for paralysis for the EU foreign and security policy". According to other opinions, unanimity, like consensus, remains an ideal which can not be easily abandoned in favor of an expected but still uncertain efficiency. As a matter of fact, analyst are not certain if through simplified formulas they will overcome the deficit of democracy in the European Union. Undoubtedly, the optimization of the solutions pertaining to the adoption of the decisions in the European Union will be a long lasting process which will be extended after the ratification of the Treaty establishing a Constitution for Europe, as well.

As far as what we expected in the predictable future is concerned, we find information in the judicious contribution of Professor Augustin Fuerea on the Treaty, convened upon in its substance but whose working out is still underway from the point of view of its form.

In his systematic and austere contribution, Mircea Coşea Ph. D. affirms that "Romanian integration into the European Union is essentially an economic issue", and that "the large scale industry remains the major link of a competitive economic structure" on our road towards European integration; these affirmations will remain a useful suggestion for any governmental programme. The assessment of finance specialists Bogdan Baltazar and Bertrand Isnard, pertaining to the role of the banks as "genuine growth propellers", is of a similar importance.

The optimism expressed by Alexandru Fărcaş and Răzvan Pantelimon, in the essay "Romania's negotiation for European integration: the premises of success", on the finalization of the accessions negotiations under European Commission mandate in its current membership, is robust and proves a full awareness of the success premises.

The European Union is a lively body which can not remain rigid in its maturation process, anchored in regulations, texts and concepts agreed upon at a certain moment of its evolution. It will be impossible to avoid the continuation of the debates on the interpretation of the essential principles of international relations, such as for instance sovereignty, a pretty extensively disputed topic, not only at a theoretical level. Both the political phenomena as well as the integrationist processes and the globalization lead to a transformation of sovereignty in its very substance included, towards a "new sovereignty".

The favorite formula is that through European integration the state do not renounce their sovereignty but agree that certain prerogatives of the latter should be exerted jointly.

This follows the tradition of the opinions expressed by the Romanian intellectuals as early as the period between the two World Wars, related to the coordinates of the League of Nations or to other project. The wealth of European ideas formulated by Romanian thinkers of those times, these evinced in the study of Professor Constantin Buşe Ph. D. "The Romanian opinions regarding the European integration" is quite impressive.

To underline the sensitive character of the topic in "the new Europe" we mention the prevailingly political study of the Polish writer Piotr Wierzbicki "Sovereignty - a good God" in which he expresses, in essence, the opinion that the misfortunes of the world have not been generated by an excess of sovereignty, but on the contrary, "the world is also governed by ideas".

Equally confident in the European future of Romania are the other studies or articles included which have determined the first issue of the Romanian Review of International Studies - new series to be a substantial and attractive issue.

Vasilica Mucea

Călin Hențea, Cornel Scafes, and Horia Șerbănescu – *The Romanian Army in International Missions*, C.N.I. Coresi Publishing House, Bucharest 2004, pag.

Edited by C.N.I. Coresi Publishing House, *The Romanian Army in International Missions* is made up of 80 written pages, 50 photos and 8 pages of colored plates. It represents a very important event for the Romanian military literature. The readers have now a very concentrated work about the missions conducted by UNO, OSCE and NATO in theatres of operations situated in Europe, Africa and in the Middle East. The book is a part of the "DOROBANȚUL" collection, published by the Military National Museum. This collection wants to present the military history from a fresh point of view. The authors of the book, Călin Hențea, Cornel Scafes and Horia Șerbănescu, do not want to reconstruct in every detail the missions; they want to make them known by the public. The book presents the military missions from the contemporary history of our Armed Forces. It is written in a modern style, it can be considered non-conformist compared to the classical way in which history books are written. The book combines the style used in newspapers with history.

For many reasons the book is very easy to read. The inter-linguistic criteria, for a reader that does not know Romanian, means that the book can be viewed as a photo album. The commentaries of the photos and the colored plates as well as the short summary can form themselves a book. Another reason for which the communication is so successful is represented by the direct presentation of each military mission. The book becomes a very important material for the reader who wants direct and complete information on military missions, or who wants to get accustomed to this domain.

The material is built up of three parts, each of them representing the Romanian military missions on each continent. The missions in Somalia, Rwanda, Angola, Congo and Ethiopia form the first part, called "Missions in Africa". Seven missions are presented in 12 pages. The next 10 European missions in the Republic of Moldavia, ex-Yugoslavia, Albania and Georgia represents the main material of the book. The role played by Romania as a factor of stability in Europe is very well underlined in 17 pages, very well written, both in Romanian and in English. In the last part the missions in the Middle East are presented. During the 5 missions in Afghanistan and Iraq, the Romanian Armed Forces proved to be a modern army, able to have a great contribution, besides its allies. From a historical point of view, the book is very valuable because all the changes in commanding and in preparing the actions are minutely presented.

The subject is current because out of 22 missions presented, at least 8 are still continuing. This thing raises some problems from the historical perspective. Still the sources presented are official and the work does not leave room for interpretations and speculations. That is why the material is an excellent source of documentation. The images presented in the book have both an artistic value and a technical one. The images selected underline the importance of the equipment and other important moments. The commentaries that go with the photos concentrate on each detail caught in the image. The plates represent soldiers that have taken part in different missions. Together with the commentary they form a kind of a fresco. The same style is used by the same authors in another book, **The Romanian Army from 1941 to 1945**, a very interesting volume worth reading by those who want to enrich their knowledge in the history of the Romanian Army. We live in an epoch in which our perspective on the future depends more and more on the degree in which we succeed in understanding the past and the present, which are complex, especially in what military missions are concerned. The book is a guide that helps us to face the crucial moments that are to come in the next years.

Although the volume is written on the structure of a book on military history, adressed mainly to the military staff, the information presented can be useful to other categories of readers that want to get accustomed with this domain.

Radu Cătălin