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BETWEEN RHETORIC AND ACTION: REFLECTIONS ON ROMANIA’S EUROPEAN UNION ACCESSION AND POLITICAL CONDITIONALITY – THE VIEWS FROM BRUSSELS AND BUCHAREST

GEOFFREY PRIDHAM∗

ABSTRACT. The role of political elites is an important theme in the study of EU enlargement; but how this relates to domestic politics is often neglected. This theme is applied to Romania, with a focus on the problems of implementing the EU’s political conditions. Firstly, attention is given to the conditionality policy adopted by Brussels with respect to Romania; and then, secondly, attention turns to Bucharest. The analysis of Romanian responses is based on a distinction between political will and political capacity. While there are some positive elite characteristics relating to the will factor, although complicated by instrumental attitudes towards conditionality, various problems of political capacity help much to explain Romania’s persistent difficulties for much of the accession period in meeting Brussels’ demands.

1. INTRODUCTION

The role of political elites in EU accession – meaning in particular governing elites in candidate countries – is a much recognised though under-explored theme in that process, both theoretically and empirically. Studies of European enlargement have invariably remarked on this process as elite-driven or top-down – which is broadly true. However, when focussing on interactions between European and domestic politics in this context, the picture may look somewhat more complex than hierarchical assumptions about top-downness.

Thus, while national governments are crucial in this process in both responding (effectively) to Brussels’ demands as well as, obviously, negotiating on behalf of their countries, implementation of both European legislation and the various conditions (economic, political and ‘the capacity to assume the obligations of membership’) depends to some significant degree on state capacity (as distinct from national governments) but also other domestic actors whether (party-)political or economic interests, NGOs and, in certain respects, public opinion – though depending on the kind of legislation and conditions in question1. EU enlargement therefore involves domestic politics to a fuller extent than often envisaged in the elite-driven

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1 G. Pridham, Designing Democracy: EU Enlargement and Regime Change in Post-Communist Europe (Basingstoke: Palgrave Macmillan, 2005), pp.130-31 which distinguishes between three complementary approaches when conceptualising the implementation of EU conditionality: the Eurocratic; the national-level top-down (the role of national governments); and, the national-level bottom-up (the importance for compliance of other domestic actors notably at the sub-national and societal levels.)
scenario. Furthermore, political elites are not operating in a political vacuum notwithstanding the fact that accession requirements are dictated from above by Brussels, the enormous time pressure of membership negotiations and the occasional impatience of the European Commission with the complexities and constraints of domestic pressures on national governments.

There are of course broader implications of this question both for the EU itself and for democratisation in post-Communist countries. On the one hand, there is the growing problem in member states of the EU’s legitimacy which is also linked with other pending issues like its constitution. This problem is also likely to arise in new member states for much the same reasons (to do mainly with the perceived remoteness of EU institutions from national publics, their vast ignorance of EU affairs but also the very complexity and disputed meaningfulness of the EU system). In addition, EU legitimacy problems might arise in new member states from the top-down and speedy nature of accession especially in the light of the considerable credibility gap between political elites and publics in the post-Communist new democracies of Central & Eastern Europe (CEE), despite the formal consultation of public opinion witnessed in the series of referenda on EU membership conducted in the EU-8 during 2003 (all of which proved positive).

On the other hand, as indicated by this last problem, there may also be implications for democratisation from EU accession, or more precisely for post-Communist democratic consolidation. For, accession from the later 1990s essentially occurred during the consolidation rather than transition years of these new democracies (it is, however, possible in a few cases like notably Romania that extended transition problems spilled over into the accession period). In any case, since EU enlargement and the later stages of democratisation have in CEE run concurrently, it is reasonable to assume they have interacted to some extent if not to a significant extent. This is especially because of the extensive albeit not comprehensive political conditions demanded by Brussels concerning democratic development in candidate countries. Such a concurrence has been true of both the enlargement to the EU-8 in 2004 and to Bulgaria and Romania in 2007; and, judging by present trends, it is likely to be broadly true too of further accession states from the West Balkans (Turkey notionally presents a rather different case in this respect) and maybe also post-Soviet countries like Ukraine. In this context, elite/mass relations acquire a vital importance for the prospects for consolidation due to the relevance of both levels for its achievement as well as the example-setting influence of new democratic elites on still unformed (if not to some degree still undecided) national publics and the various constraints on elites that come from mass opinion.

2. DEMOCRATISATION AND EUROPEANISATION

The role of political elites in democratisation is a much accepted, indeed much emphasised, variable in the literature on regime change. Empirically, there is considerable evidence from different countries that such elites, if not individual political figures, may play a decisive part in how transition paths develop. This not least because of the uncertainty that usually predominates especially at the start of regime change,
allowing great scope for elite or individual initiative. Certain transition tasks in particular are largely subject to elite decisions notably institutional design in new democracies and – as highlighted in Central & Eastern Europe (CEE) – the way in which sensitive matters of human and minority rights are handled.

Most of all, the role of elites has benefited from the dominance of political choice thinking in democratisation theory. Notions like “elite settlements”, “political crafting”, “elite convergence” and “elite adaptation” demonstrate this approach; and they underline how much elite choice and behaviour can impact on wider developments in regime change and especially public responses. For example, elite consensus on the new democratic settlement may well have some formative effect on its eventual legitimation, perhaps all the more when the new democratic elites include elements from the former regime. This is of course a variation on the importance of elite support for the rules of the game which features in elite theory.

Thus, while elites are commonly seen as central in the chances of success in democratic transition, they may nevertheless continue to have an influence in some ways crucial to democratic consolidation. At the same time, especially in the light of transition experience in CEE, it is now seen that political choice has been exaggerated to the neglect of structural determinants and that it is the interplay between the two that provides the best analytical handle on regime change dynamics. This is because of the presence in CEE unlike in Southern Europe of parallel transformations (notably economic), a new attention to the role of the state in regime change and above all the decisive influence exercised by international organisations in democratisation.

The relevance of this argument for studying the role of elites for EU enlargement depends on how far this process may be seen as “systemic”. The EU does of course provide a set of structural determinants with which new democratic elites, ambitious to join that organisation, have to engage. In a literal sense, accession countries are entering a particular, rather unique, form of political system, although one that is clearly incomplete when compared with conventional, i.e. national, political systems such as those in member states which are primarily parliamentary democracies. It may certainly be argued that European integration has various profound effects on accession or new member states especially on policy matters. This also applies to some extent to institutional matters insofar as countries acceding have to adapt their state machinery to the business of EU policy-making and for the purposes of liaison with EU institutions. Undoubtedly, political elites – especially those in government – are increasingly subject to intensive transnational socialisation through their multiple contacts at different levels.

Countries wishing to negotiate for membership and eventually join the EU have to satisfy Brussels that they meet the Copenhagen conditions of 1993 that they have ‘achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’. It is in this context that we focus on political elites and the democratic conditionality of the EU: their motivation, response but also

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their interaction with domestic pressures and how these facilitated or inhibited their ability to implement the political conditions. In short, this theme of democratic conditionality provides a relevant and focussed approach to political convergence between CEE and the EU as seen through elite responses to the political demands of Brussels: what is the understanding of and expectations concerning democratic conditionality in the EU?; how much is the democratic imperative crucial to elite attitudes in CEE, and how much were these based on conviction or alternatively instrumental for the sake of accession?; and, with what effect has this conditionality been carried through for it is at this level of implementation that one is most able to assess the impact of European integration on democratic consolidation in post-Communist countries? Answers to these questions should provide evidence on political elite as well as democratic convergence between CEE and the EU.

The term “convergence”, which arises in transnational theories on regime change, refers to gradual movement in system conformity based on an institutionalised grouping of established democratic states that has the power and mechanisms to attract regimes undergoing change and to help secure their democratic outcomes. The EU is the most ambitious example of this kind of grouping, all the more as its promise of incorporation (i.e. EU membership) gives a direction and purpose to convergence and, of course, it reinforces considerably its power to attract. Depending on the determination of new democracies to accede, the EU is provided with a compelling leverage over their political elites. It is in this context that conditionality acquires its bite. Democratic conditionality is normally achieved by specifying (pre-)conditions in return for support (material or other) or political opportunities, as in this case membership of a prestigious international organisation. Hence, while convergence has its gradual and mildly intensifying pressures, conditionality adds a sharpness to the prospects of convergence.

At the same time, democratic conditionality is dependent for its implementation on the responsiveness of different domestic actors and not merely governments. It is for this reason that the basic focus in this paper is on both political will and political capacity. The former involves an unqualified strategic commitment on the part of political elites to joining the EU with meeting conditionality seen as a component of that strategy. Political capacity refers however to the functioning of the political system; and, it therefore is especially relevant to the implementation of European demands. In practice, this points to state capacity, although over some of the political

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3 This paper draws on project work from an ESRC Fellowship (2002-7) as well as from a Leverhulme Fellowship (2002-4) looking at conditionality impacts in accession countries of CEE. Altogether, in addition to documentary sources nearly 500 elite interviews have been carried out since 1992 in the following accession countries as well as in the EU institutions (European Commission, European Parliament but also heads of CEE missions in Brussels); Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia. The ESRC Fellowship concentrates on the three countries of Latvia, Romania and Slovakia. Altogether, some hundred interviews have been carried out in Romania, the subject of this paper, during three field trips in May 2001, October 2003 and November/December 2005. Categories of interview respondents have included government ministers, ministerial advisers and senior civil servants; chairs or members of European and also foreign affairs committees in parliaments; party leaders and international secretaries of parties; heads and members of EU delegations in accession countries; NGO leaders; colleagues in policy institutes; and, journalists working on EU affairs.
conditions the involvement of non-governmental actors is also important.

The case of Romania is chosen for a number of reasons as a test of integration effects during accession. The country presents a difficult case in comparative terms both in its democratisation path, with severe Communist legacy problems, and in its EU accession, being commonly regarded in Europe as the “laggard” of the post-Communist enlargement process. Largely for this reason, Romania has acquired a negative image in Europe; and this has coloured the EU's conditionality policy towards that country. The country has often been accused, not least by EU officials dealing closely with Bucharest, of a marked disparity between rhetoric and action in its accession process. At the same time, Romanian elites have shown a fairly strong dependency culture in looking to the EU (and other international organisations) for assistance and policy initiative to a degree greater than in other countries of Central & Eastern Europe (CEE), namely those that joined the EU in 2004. It may thus be supposed that both the scope and the limitations of the EU's political conditionality will be particularly tested and highlighted by this case study.

The paper first discusses the conditionality policy of the EU and the thinking behind this as well as the view of EU elites towards Romania. There then follow two sections, the first dealing with the questions of political will and the second with problems of political capacity. Lessons are then drawn from the 2004 and 2007 enlargements with some attention to possible post-accession tendencies with respect to completing the implementation of democratic conditionality.

3. DEMOCRATIC CONSOLIDATION AND EU ACCESSION: THE BRUSSELS PERSPECTIVE – INNER-DIRECTED LINKAGES

Pravda has emphasized the degree of inclusion in the international community as an important yardstick in assessing the impact of conditionality and the prospects for democratic consolidation. By this was meant the position of states in queues for membership in the main Western organisations, notably NATO and the EU, with the following categories: double insiders, insiders, outsiders and extreme outsiders (with Ukraine and then Belarus and Serbia under Milosevic representing respectively the last two categories)⁴. As of today, Romania is now top of the queue together with Bulgaria having moved through several of these categories and so may be taken as a test case of political convergence on European democratic standards through the accession period.

Such a categorisation is relevant to the pull of the EU’s leverage with regard to conditionality for the dynamics of accession and the prospects for firstly negotiations and then eventual membership are crucial in determining the willingness of governing elites to meet conditionality demands. There is therefore a trade-off between the credibility of the EU in carrying through its conditional promise of membership and the drive for change by candidate countries. This consideration thus modifies the common view that accession is asymmetrical with Brussels dictating the terms which are hardly open to real negotiation.

Over the past decade, the EU has expanded its democracy agenda with regard to CEE. While the Copenhagen criteria as defined in 1993 covered the stability of democratic institutions, the rule of law and human and minority rights, the EU's political conditions have also since then come to specify the strengthening of state capacity, the independence of judiciaries, the pursuit of anti-corruption measures and the elaboration of a series of particular human and minority rights (as well as highlighting the severe condition of the Roma), but also economic, social and cultural rights such as relating to trafficking in women and children and gender equality. It is worth noting at this point that several of these conditions have consequences for different elites such as bureaucratic elites (over state capacity), the judiciary over its reform and independence (i.e. from political influence) and economic as well as political elites (including especially their inter-relations) with regard to fighting corruption. In other words, the EU's democratic conditionality has important implications for elite behaviour in the cause of strengthening democratic development. This significant evolution of the EU's conditionality from the mid-1990s was partly in response to emerging problems in the new post-Communist democracies (notably the question of minorities), but it also expressed an underlying concern in Brussels over their functionality (notably, state capacity) as prospective member states not to mention the impact of a mega-enlargement on the EU itself.

The EU's political conditions have evolved pragmatically without this involving any comprehensive view of liberal democracy. This is shown by some important gaps in the Commission's attention to democratic actors for political parties are omitted (although their activity is catered for by the European transnational parties), while civil society is narrowly defined as the development of NGOs (which is handled more via the Phare Programme than the political conditions properly speaking). The Commission's reluctance to engage with political parties is an admission of its more bureaucratic than political approach, preferring the EP to take up certain more controversial political issues that it might find difficult to handle publicly. In broad terms, the EU's conditionality's focus was determined by its timing in relation to post-Communist democratisation for, in effect, it aimed at its consolidation not its transition. Conditionality was not about macro-institutional choice just as it did not engage with types of liberal democratic regimes. As the Copenhagen conditions stressed, the EU concern was about the 'stability of institutions guaranteeing democracy' – whatever they were. In short, the relationship between the EU's political conditionality and democratic consolidation is in one sense about a reinforcing process, for the range of political demands is fairly extensive. It is, however, more limited in scope compared with consolidation's tasks. That is especially true in certain non-institutional areas, for the focus on civil society is restricted to NGO activity. And political conditionality is of course limited temporally to the period of accession, which amounted to less than a decade in the case of the 2004 enlargement though slightly longer for the two countries joining in 2007.

Over Eastern enlargement, the Commission has come to insist that its democratic standards are satisfied

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5 Pridham, *Designing Democracy*, p. 43.
before accession takes place (in contrast to the more relaxed approach in previous enlargements, notably the Southern European); and that the original Copenhagen criteria as defined in 1993 are met before membership negotiations are opened. At the same time, the EU developed new instruments for furthering this conditionality, such as the Regular Reports (the annual monitoring reports of the Commission on candidate countries), the Phare Democracy Programme and twinning arrangements with individual member states.

The European Commission’s successive Regular Reports on Romania have tracked democratic standards in that country during the accession process, thus enabling patterns to be identified. While some problems were cross-nationally common among CEE candidates, notably difficulties with judicial reform and fighting corruption, various other problems were particular to Romania. These were either problems of degree (e.g. Romania was continuously rated the most corrupt country in Europe) or problems that were more unique such as a marked slowness with economic reform (which had a political significance), low state capacity and a weak policy-making environment as well as the special issue of institutionalised children which was treated in European circles as a reflection on the state of human rights.

Implementation was the subject of persistent concern after negotiations commenced, and increasingly so as Romania’s likely membership drew nearer. It is no surprise that the Commission has tended to be particularly interventionist over the political conditions with regard to Romania. Early in 2004, for instance, when Brussels was beginning to become uneasy about concluding negotiations with Romania, the Delegation had acted on the idea that special conditions should be imposed on Romania to convey the serious need for reforms. The famous “To Do List” that followed EP criticisms in February 2004 was conceived by the Delegation, presented to Prime Minister Nastase on the plane to Brussels with the message he should accept these and tell Commissioner Verheugen these represented his government’s efforts to answer unease in the Commission6. A few months later, the EU Delegation in Bucharest together with the Ministry of Justice helped to draw up a major package of judicial reforms that was inspired by West European ideas of judicial organisation. Among other things, this ended the political appointment of judges.

The European Parliament was rather more blatant and overtly political in its approach to conditionality matters. It was also in the EP that the influence of Romania’s image problem was more in evidence reflecting as this did some party-political viewpoints and perhaps also national press coverage of Romanian problems7. The particular issue that the country rapporteur during the negotiations, Emma Nicholson, highlighted doggedly was that of the miserable state of institutionalised

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6 Author interview with Jonathan Scheele, EU Ambassador to Romania, in Bucharest, November 2005, in which he also noted that the Delegation sought “regular contact with administrations [in Bucharest] that work in a better way – a form of peer pressure [on weaker administrations]” and that “it’s not looking great” on the question of administrative capacity.

children, a legacy of the Ceausescu regime. Her commitment to the issue was such that in 2001, with government inaction, she raised the question of interrupting negotiations; and this implied threat produced some results. In February 2004, the EP report was harsh in its criticisms of Romania’s record on political conditions, casting doubts on the government’s seriousness and there were again moves for suspending negotiations. Various measures were then listed as necessary, including fighting corruption at the political level, implementing the independence of the judiciary, reinforcing the freedom of the media, stopping ill treatment at police stations and action on the moratorium on adoptions. On corruption, the EP demanded that “first and foremost there must be the political will to eradicate corruption, for only this will lead to a change in attitudes.” The result was the “To Do List” mentioned above of some thirty items with a short deadline in July 2004 that formed an agreement between Commissioner Verheugen and Prime Minister Nastase.

One should add here that Romania has encountered an image problem abroad, especially in EU circles, which to a great degree has reflected past and continuing doubts about the state of Romanian democracy. With the background of Ceausescu’s harsh regime, this image surfaced quickly in Romania’s transition with one event in particular making a strong impact on European opinion – the highly controversial suppression of anti-government protestors in June 1990 by government-backed miners who ran amok in Bucharest. As a result, Brussels delayed the signing of its trade and cooperation agreement with Romania for several months. Uncertainty and unease over Iliescu’s systemic intentions – provoked by his praise for the miners’ action and coloured by his own Communist past under Ceausescu – combined with incidents of inter-ethnic strife to maintain this negative image. The second reason for the image was the continuously poor performance during the 1990s and beyond of the Romanian economy which overlapped with the first problem insofar as Iliescu’s reluctance over system change including marketisation was seen behind this problem. The third reason was Romania’s gathering reputation from the mid-1990s onwards for implementation failure through organisational inefficiency over the acquis and conditions. Sometimes, this reputation was reactivated by specific issues, such as in 2002 over that of institutionalised children – an emotive question in European circles – and illegal immigration by Romanians in Europe.

While implementation became the EU’s predominant concern during the negotiations for membership in 2000-04, the country’s image problem abroad continued to be fed by these three factors throughout the past decade-and-a-half of Romania’s post-Communist regime change. Romanian diplomats were only too aware of this problem and sought to overcome it through a patient emphasis that Bucharest was gradually if belatedly

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9 According to Romania’s Chief Negotiator with the EU 2000-04, Romania’s image problem ‘didn’t influence a lot’ the negotiations, but it was ‘a strong problem, not in Brussels only but in all EU capitals’ and especially in northern European ones (author interview with Vasile Puscas, in Bucharest, November 2005).
putting changes into effect\textsuperscript{10}. While exploiting this image problem could be seen as a form of special pressure on Romania to deliver on EU affairs, efforts at reconstructing the country’s image were always vulnerable to domestic developments, all the more as the press in Europe has for long tended to look for ‘bad news’ from Bucharest. Nevertheless, in spring 2006 Club Romania-EU (a NGO for Romanian public officials in Brussels) launched a survey of EU affairs professionals from and outside Brussels and produced a report on this very question, aimed at confronting the country’s image problem. It concluded that ‘many of those surveyed indicated that Romania is perceived as a poor, old-fashioned, messy country, and, worse, that Romanians do not seem aware of this situation\textsuperscript{11}. The timing of this project was significant for it took place when Romania was in limbo between the accession treaty and the final decision on the date of EU entry (a sensitive issue in Bucharest circles).

It was evident from these developments that EU criticisms of Romania had in fact become stronger over time. The reason was a fear, with negotiations ended, that the lessening of the EU’s leverage would weaken Romania’s will to attain conditionality targets. As it was, on the eve of ending negotiations in December 2004 there an agreement to operate a special “safeguard clause” of eleven points over which Romania continued to be monitored for the following year and a half. This “safeguard clause” amounted to an unprecedented extension of conditionality beyond the end of negotiations and the signing of the accession treaty \textsuperscript{12}. The clause also provided for one year’s delay in entry from 2007 to 2008 ‘if serious shortcomings have been observed in the fulfilment by Romania of one or more of the commitments and requirements’ relating to four specific items of the competition chapter and seven of the JHA chapter (including ‘the acceleration of the fight against high-level corruption’\textsuperscript{13}). The Commission fully exploited this extension of the conditionality period so that Romania (and Bulgaria) were placed under constant pressure to improve their implementation right up to the final decision over entry in September 2006. Even then, membership for Romania and Bulgaria as from January 2007 would be hedged with further monitoring (in Romania’s case concerning judicial reform and the fight against corruption) and safeguards or sanctions including the withdrawal of EU funds\textsuperscript{14}.

It should, finally, be added that Romania and Bulgaria encountered at this last stage of accession a much tighter and more demanding conditionality policy that came into play following the 2004 enlargement. There were four factors

\textsuperscript{10} E.g. the comment of Romania’s ambassador to the EU that ‘perceptions change slowly’ and the answer to the problem was ‘the capacity to show and convince that important transformations have been taking place’ (author interview with Lazar Comanescu, in Brussels, October).

\textsuperscript{11} Club RO-UE, Footprint Romania: Based on a Survey of European Affairs Circles (Brussels, July 2006), p. 16.

\textsuperscript{12} According to the EU Ambassador to Romania, the “safeguard clause” was ‘intended to preserve leverage’ on the part of the EU, for the thinking was that ‘we need to find some instrument that will maintain pressure after the Treaty is signed’ (author interview with Jonathan Scheele, in Bucharest, November 2005).

\textsuperscript{13} European Commission, press information, 5 January 2005.

\textsuperscript{14} European Commission, Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania (Brussels, 26 September 2006).
behind this change: lessons drawn from the 2004 enlargement over conditionality, especially concerning implementation problems; the approach of Commissioner Rehn who — unlike Verheugen’s rather relaxed line — was risk-averse, paid a strict attention to the detail of conditionality commitments and imposed new bureaucratic hurdles (called “benchmarks”); pressures from “enlargement fatigue” inside the EU and the crisis over the constitution — which brought to the fore public declarations by some political figures cautioning about further enlargement; and, not least, the fact that in the West Balkans interested countries faced more difficult pre-accession transformation problems of a statehood, political, ethnic and socio-economic kind. This tougher line on conditionality matters was evident over the new issue of handing over war criminals, for lack of progress here was the occasion for postponing membership talks with Croatia in spring 2005 for half a year and for interrupting talks with Serbia over a stabilisation and association agreement in spring 2006. In other words, Romania and Bulgaria experienced the thin edge of a forthcoming wedge over accession conditionality. This showed that Brussels intended enlargement in the future to be a far more stringent, rather less predictable and by no means automatic process.

4. ROMANIAN POLITICAL ELITES IN COMPARATIVE PERSPECTIVE: THE QUESTION OF POLITICAL WILL – OUTER-DIRECTED LINKAGES

Since political will is interpreted as a strategic commitment to European integration, the focus here is on elite outlooks and motivation. This is explored by looking at: relevant elite characteristics in Romania; the attitude towards the democratic imperative behind accession; and, behavioural aspects of the conduct of the country’s European policy. Frequent complaints in EU circles (which featured in the author’s elite interviews in Brussels and Bucharest) were the marked gap between rhetoric and action (paralleled by a noticeable tendency to produce impressive paperwork which often remained as such — the “yes,yes,yes” response); the inefficiency of pubic administration; and, the lack of internalisation of EU-driven reforms among political elites. These complaints overlapped with the country’s image problem but, substantially, they also came from EU representatives most in regular contact with Romania’s European policy-makers. How much does the study of elite outlooks and motivation in that country reflect on these problems?

Looking generally at elite characteristics (insofar as these are relevant to EU accession), the most discussed feature has been continuity with the previous Communist regime. This is an inevitable research concern especially when assessing countries in democratic transition although, in the course of time, once democratic consolidation is well underway, it becomes less pertinent. In Romania’s case, this concern has been especially pronounced because of the persistence of ex-Communist political and economic elites through the transition period and beyond. Romania was not unique in this respect in post-Communist Europe; but it was the degree of this and its effects on both policy and political life that counted.  

In the words of Tismaneanu, following the dramatic revolution of December 1989 the most abrupt break with the old order seem to have resulted in its least radical transformation.\(^\text{16}\) The experience of the Communist period continued to be felt during the accession period notably in persistent difficulties facing elite replacement and the creation of new democratic cohorts.\(^\text{17}\) Some research has nevertheless specified that the percentage of old regime cadres in the power elite was in the transition rather smaller than assumed and they included circles that had opposed the regime from within.\(^\text{18}\) Most prominent was the figure of Ion Iliescu, President 1990-96 and again 2000-4, who at one time was considered a successor to Ceausescu but was sidelined by the dictator and played a crucial role in the 1989 revolution against him. Despite this, he became in European circles a symbol of old cadres in Romania’s new democracy.

The implicit relevance of this background is that old-style elite culture was somehow a hindrance to embracing Euro-Atlantic integration both because of a form of conservatism and an assumed innate reservation if not submerged hostility towards the former inimical Western organisations. This is, however, a rather static view of elite outlook above with regard to regime change. Democratisation studies have emphasized the factor of elite adaptation in transition as a precondition for consolidation, whereby old regime elements opt for the new democratic order.\(^\text{19}\) In their doing so, opportunism and careerism may be accommodated if these accord with the aims of transition. One may, by extension, apply this pattern to Euro-Atlantic integration. Did this happen in the Romanian case?

Three elite characteristics are worth mention as affecting the political ambition to join the EU; and, they contextualise attitudes to conditionality. Firstly, there was a distinctly Romanian cultural disposition towards Europe as reflected in the impressive linguistic diversity among the political elites; and, traditionally, it had a Francophile edge to it. This has obviously made for easy transnational elite communication, although it cannot be taken as an absolute indicator of understanding of European affairs. In fact, both Romanian and Bulgarian elites were criticised earlier in their accessions (before their negotiations started in early 2000) for evidencing more political rhetoric about Europe than a true understanding of what integration involved.\(^\text{20}\)

Secondly, one salient attitude has been beneficial to the acceptance of political conditionality. This is a


\(^{19}\) Pridham, The Dynamics of Democratization, p. 150.

pronounced desire to please the West, for reasons of international acceptance, and to conform often uncritically to what the West requires. This has produced an outlook among political and economic elites of accepting outside actors as being in command, whereby politicians know how to say the right things to EU partners and political agendas are often reactions to what Bucharest is told from abroad, including adopting even critical observations from Commission documents in government priority programmes.

Thirdly, one has met a marked optimism about Romania and Europe in Bucharest. This differed markedly from the more cautious or pessimistic views of Romania in Europe, aware of that country’s political as well as socioeconomic backwardness compared with European standards. Romanian elites nevertheless looked to the EU as the essential anchor for its future development and for moving away from the past. For this reason, there was overwhelming support in elite interviews conducted there by the author during 2001-05 for the idea that integration would secure democratic consolidation. Both political and economic elites but also NGO leaders emphasised the positive dynamics coming from accession because of the EU’s driving force, the necessary discipline it imposed on public authorities but also in particular the direction for change which it provided. But there was a sense of a dependency culture behind such optimism which helped to explain Romania’s difficulties in transmitting political will into political capacity.

References to the democratic motive behind integration in author interviews with European policy-makers in Bucharest during 2001-05 invariably praised in a bland way integration’s positive impact on democratisation. At the same time, elite responses towards the EU’s political conditionality as such also indicated a positive response at an abstract level. But this was often combined with an instrumental view of conditionality as a means towards the objective of winning EU membership, as expressed in an expert analysis dealing with the rule of law:

‘It might be argued that the general perspective of the ruling elite regarding Romania’s development is distorted. It is not democratisation, but EU integration that matters most. The only long-term objective is EU accession, and short-term objectives are objectives set under EU conditionality, nothing more. Under such circumstances reinstating the rule of law in Romania was never seen as a goal per se, but

23 Cf. the statement in the Bulgarian case that ‘Bulgaria accepts from the very beginning all these principles of the European political life and thus the building of a democratic state from the very start in compliance with the European standards’ A. Todorov and A. Ivanov, ‘European standards in the Bulgarian political life’ in I. Bokova and P. Hubchev (eds.), Monitoring of Bulgaria’s Accession to the European Union 2000 (Sofia: Friedrich Ebert Stiftung, 2000), p. 27.
rather as a means of achieving accession. Former President Iliescu, in office again 2000-2004, had in the previous four years of opposition become converted to the cause of European integration though not unreservedly to all its conditions. He commented in retrospect rather ambiguously that the EU’s political conditions were “necessary” as they represented “substantial issues (referring in particular to the big inertia of state institutions with EU pressure over [this] as positive); but with some irony noted that he regarded this conditionality “as the preoccupation of our friends [in the EU] – we have no quarrel with them.” It is true that Romania’s very political approach to joining the EU (heightened as this was as in other CEE states by the lack of a viable external policy alternative) essentially explained this instrumental mentality.

Back in the early 1990s, a committed espousal of integration ideology among political elites was less in evidence in Romania and if present was primarily rhetorical overlaying traditional attitudes. Since then, a more genuine outlook has become evident especially after negotiations commenced in early 2000, producing as it were strong and mounting convergence pressures towards the EU. Involvement in negotiations and preparations for them was already producing a more informed elite. Moreover, evidence from Nastase’s close associates indicates that his own commitment to Euro-Atlantic integration and the EU in particular grew once in office as Prime Minister from autumn 2000; and that this came from holding direct responsibility for Romania’s fortunes and from close and regular contact with EU representatives. One can therefore see in the two prominent examples of Iliescu and Nastase (both leaders of the PSD which drew its genealogy from the former Communist Party) how the experience of democratic life (in Iliescu’s case political opposition) and of accession dynamics (in Nastase’s case with executive office) combined to create a more positive though not necessarily a strongly rooted attitude to European integration. Calculation and some opportunism played a certain part; but so too did a growing appreciation of political and material advantages of national concern.

In short, this analysis of outlook and motivation suggests both positive and negative attitudes among political elites concerning the EU’s political conditionality. There is an unquestioning espousal of these conditions at the official level; but here Romania did not differ much from other CEE accession states. But, at the same time, there are some indications that this conditionality – which must be seen as the focus of the democratic motivation behind accession – was not as such a high

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25 Pridham, Designing Democracy, p. 81.
27 Author interviews with Alin Teodorescu, adviser to Nastase on administrative reform and later PSD deputy, in Bucharest, October 2003 and November 2005. This commitment was replicated in Nastase’s strong wish for his party to be accepted into the Socialist International. According to Florin Lupeşcu, adviser to President Iliescu on EU and NATO affairs, Nastase “needs acceptance [by the SI] like hell; they will at last belong to a European political family” (author interview in Bucharest, May 2001).
priority or that it was, perhaps, taken somewhat for granted in comparison with other motivations of an economic and security kind.

Certainly, a marked opportunism was evident in the way political elites in Bucharest sought to make an impression on Brussels over this conditionality as well as other accession matters. This achieved a pronounced form in Nastase’s regular habit of lobbying selected heads of EU governments (including especially Tony Blair) and utilising bilateral links sometimes to bypass the European Commission (also over conditionality matters). This did not prevent Nastase making fairly frequent visits to Brussels, often at crucial sometimes threatening moments during Romania’s accession. One such occasion was over the critical European Parliament report of May 2001 which made an issue of lack of action over institutionalised children and recommended breaking off membership talks. This time Nastase sought to lobby the Commission among other institutional contacts in Brussels. This practice of trying to exploit the institutional fragmentation of the EU system became quite visible after a while and induced one observer of Romanian affairs to comment that ‘cynical Bucharest politicians quickly understood that political sympathies with capitals could trump the worries of Brussels technocrats’ 28

Such cynicism did not, however, have to mean a lack of conviction over the EU’s political conditions – or worse, a lack of conviction over democracy (which is not the same thing). Such an imperfect state of affairs may be nevertheless sufficient for achieving formal compliance with conditionality. The main problem however comes from drawing a distinction between the abstract (stated agreement with this conditionality) and the concrete where either traditional attitudes or particular interests may conflict with action on conditionality. This leads us to consider the problem of political capacity.

5. ROMANIAN POLITICAL ELITES IN COMPARATIVE PERSPECTIVE: PROBLEMS OF POLITICAL CAPACITY

Political capacity refers to the functioning of the system both in the central sense of state capacity and in the wider sense of political capacity meaning effectiveness of governance such as in the way different domestic actors interact as over European policy. Naturally, being liberal democracies, it is expected CEE systems like established democracies elsewhere encounter problems of conflict as well as resolution, thus reminding us of the importance of political participation and the need to part from the rather hierarchical and indeed also bureaucratic approach of Brussels. But they are also still new democracies insofar as these countries are with some possible exceptions (notably, Slovenia) not yet fully consolidated; and, so, how they functioned and perhaps improved under accession pressure was itself an indicator of democratic development.

Romania’s difficulties of state capacity arose early on in the country’s accession process. For, while most of these difficulties were also met in other CEE accession countries, the degree of them was rather pronounced in Romania’s case. The European

Commission’s avis on Romania in 1997 already identified the root problem here and this reflected on the state of the country’s bureaucratic elites:

‘The central administration is overstaffed. However, some ministries suffer staff shortages, particularly in the area of qualified personnel. Salaries in the private sector are much higher than in the public sector. This has led to an element of “brain drain” to the private sector... Public confidence in the civil service is low. There can be little doubt that much of the distrust which exists arises from the widespread corruption in the public administration... The concept of the civil service as a profession is still developing... The effectiveness of the civil service is also hindered by an unwillingness to take personal responsibility for decisions, with the result that these are passed too high up the chain of command, causing overload on senior staff, and delay’ 23.

Difficulties of coordination between ministries (a vital factor in managing accession business), a habit of repeated administrative reorganisation (some of this due to political interference, some to accession requirements, but generally inhibiting for efficient management) and a marked lack of continuity of personnel more than in other CEE candidate countries (a special problem given the effort required to master EU affairs) were the most common problems over the accession years. There has been a tendency for these problems to persist through Romania’s accession period. For instance, traditional practices whereby ministries were often regarded as fiefs by party politicians and anti-reform mentalities in the bureaucracy hostile to modern management methods were particularly strong. Thus, the theme of “old state, new rules” had a special pertinence in Romania’s case; and this presented serious obstacles to meeting the EU’s own “third condition” concerning administrative capacity or ability to cope with the demands of EU membership.

It followed that progress with administrative reform was at best slow and rather piecemeal29. Beyond inherent bureaucratic conservatism, it was not helped by a reluctance on the part of the ruling PSD during the negotiations period to abandon its effort to reinforce political control over the state machine. It was this politicisation, building on old habits from Communist times, that powerfully checked administrative professionalisation notwithstanding fine sounding strategies for administrative reform such as civil service laws produced to please Brussels. In the end, it was typically the pressure of regular direct contact with the EU over negotiations and other accession business that brought about limited change. There was a noticeable improvement in working methods in those sectors of the administration – specifically, integration departments in the different ministries – which were in regular contact with Brussels, leading to the phenomenon of “islands of excellence”31. By and large, these


30 This was the basic conclusion to the Commission’s Regular Report on Romania published in October 2005 (European Commission, Romania: 2005 Comprehensive Monitoring Report, Brussels, 2005, pp. 10, 21).

31 Pridham, Designing Democracy, pp. 120-121. Some saw these “islands of excellence” within an “archipelago of incompetence”.
changes made for better management of the negotiations. But there was not much sign of wider effects from improved governance that might have countered public mistrust.

One possible effect of these limited improvements in state capacity was over implementation of the EU's political conditions. Obviously, implementing these conditions was initially a matter of government response or initiative and of legislation; but there have been no special difficulties in Romania over passing necessary laws (once the governments decided to act), except when the parliament proved reluctant to pass anti-corruption legislation in early 2006 thus placing the government in an embarrassing position with regard to Brussels (where outrage was expressed over this act of apparent parliamentary irresponsibility). The overriding problem has been putting these EU political conditions into practice; but here the different conditions vary significantly as to what factors – or, for that matter, what actors – are responsible for this. Thus, while some conditions are essentially dependent on institutional action such as the stability and accountability of democratic institutions (or, changes like decentralisation where in fact Romania has been rather slow), other conditions depend on both executive action and behavioural or cultural compliance. The two most difficult examples in Romania of the EU’s democratic conditionality were judicial reform and corruption, which persisted through the accession period – although there were some belated improvements on both fronts – and were repeated as an area for continued monitoring and possible sanctions by Brussels after EU entry in 2007. Both problems were complex. Judicial reform involved not merely changing professional structures but also dealing with a judiciary largely appointed under the Communist system and still subject to political influence under the post-Communist democracy. Judicial elites were thus not only inherently conservative but also inhibited by a pattern of political subservience.32

Corruption was, if anything, even more difficult a matter to confront effectively because it affected different layers of public life (and Romania notoriously was repeatedly rated the worst country for this in Europe by Transparency International). Above all, it concerned respect for the rule of law and affected other issues of reform, notably administrative and judicial, the operation of the public services (notably the health sector), the conduct of post-Communist economic transformation and, in particular, the will of the political elite (especially of the ruling PSD during the years of EU negotiations) to embrace reforms since they challenged embedded party-political interests in several ways. These different aspects all had consequences for the rooting of democratic life whether procedural or behavioural including the effects of political and economic elite practices on public opinion.

All this referred back to the outlooks and motivation of Romanian political elites as being a central factor in the

32 Cf. the comment of a Bulgarian human rights lawyer that the traditional education and understanding of lawyers in former socialist countries – that they should act as "counsel for the state" – predetermines the lack of any concept for reform among members of the judiciary (Z. Kalaydjieva, ‘An independent judicial system in the context of EU accession’ in European Institute, Sofia, Bulgarin’s Progress towards EU Membership in 2000 – the NGOs’ Perspective (Sofia, 2001), p. 18.
implementation of EU conditionality. Resistance was apparent over certain political conditions on the part of the Nastase Government that held office through almost the whole period of negotiations from 2000 to 2004. It was this together with problems of administrative incapacity that most of all differentiated Romania from other CEE candidate countries. The Government drew up the necessary plans to fight corruption but showed a lack of will in forcing through change not least because the ruling party’s own patronage interests were at stake. However, in the course of time as the 2004 election approached, with mounting scandals and growing public sensitivity to this issue, EU pressure over corruption began to have more effect.

Furthermore, Nastase was evidently not that committed to administrative reform despite his ambition for Romania to join the EU. He and his ruling PSD were reluctant to cede political control over the national bureaucracy which was an important precondition for the development of a really competent civil service. The same party-political approach was evident in Nastase’s lack of conviction over judicial independence and lack of enthusiasm for judicial reform. He was particularly strengthened here by pressure against such reform from President Iliescu. Furthermore, he showed signs of wanting to continue exercising political influence on judges through party networks even after granting judicial independence.

In November 2004, a clamorous scandal broke when the full transcripts of a PSD executive meeting in 2003 were leaked to the press. These revealed various party leaders, including some in government, discussing blatantly ways of manipulating the judiciary and bribing journalists over this matter. Some of the crude language used about political manoeuvres recalled that contained in the Watergate tapes. Excerpts included the following comment from the Minister of European Integration, Hildegard Puwak: ‘I think we should reconsider the transparency law and see if we could amend it somehow, because it gives journalists the right to get all over the place, which means transparency for everybody, in 24 hours they can get access to every little file which was not specifically mentioned in the government decision regarding classified information – I believe this law is excessively permissive’.

One marked difference between the political parties concerned this issue of fighting corruption which by the end of Romania’s accession emerged as the most difficult condition to implement. On both occasions when the centre-Right came to power, in 1996 and 2004, these parties concerned made a major issue of corruption. In the December 2004 election, it was even the top issue – being highlighted by the above-mentioned scandal – not least because

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33 Author interviews with Alin Teodorescu, adviser to Prime Minister Nastase on administrative reform, in Bucharest, October 2003; and with Marius Pofrinou, former State Secretary in the Ministry of Public Administration and Interior, in Bucharest, November 2005.

34 Author interviews with Sorin Ionita, Director, Romanian Academic Society, in Bucharest, October 2003; and, with Alin Teodorescu, former adviser to Prime Minister Nastase and parliamentary deputy of the PSD, in Bucharest, November 2005.

35 Pantulescu and Vetrci-Soimu, Evaluating EU Democratic Rule of Law Promotion, p. 71. Shortly after, Mrs Puwak resigned as minister after being accused of embezzlement.
of the PSD’s reluctant and hardly disinterested approach to fighting corruption while in office during the previous four years. Clearly, the centre-Right saw political and electoral advantage in exploiting this issue – a case where partisan interests converged with an EU political demand – although elements of conviction were also present in their position.

The new government made decided efforts with several of the political conditions at this late stage to meet Brussels’ requirements in time for the end of negotiations. This was most noticeable in the area of judicial reform. This owed much to the committed activism of the Minister of Justice, Monica Macovei, a former NGO leader and human rights lawyer turned politician. Her unhierarchical approach to reform, which also had implications for fighting corruption, was that nobody was above investigation. This relentless approach produced rancour in establishment circles, but it was one that had the blessing of Brussels which strengthened this last-minute drive to make several significant changes in the judiciary.

In general, Romania presents a complicated and rather weak policy-making environment when viewed in the EU context. And, this affected the role of other actors including NGOs which in the accession period were not strongly developed outside Bucharest, although the involvement of some in accession issues did help to promote their activity vis-à-vis the government. By and large, the public was not engaged with the EU’s conditionality except when issues like corruption became politicised, as just noted. During this period the strong mistrust in political elites and public institutions remained, although public attitudes expressed some hope that the EU (which was accorded high prestige) might promote better Romanian institutions. It therefore remained to be seen whether EU membership would in any way meet this rather high expectation.

6. CONCLUSION: LESSONS FROM EASTERN ENLARGEMENT AND POST-ACCESSION TENDENCIES.

Elite attitudes and behaviour and political convergence with the EU have, by focussing on democratic conditionality, been the concern of this paper. From this, it is clear that EU enlargement is not as straightforward a matter as suggested by those who emphasise this process as asymmetrical and top-down. That assumption is broadly true but it does not, with regard to the implementation of this conditionality, take sufficient account of domestic factors in candidate countries. Also, as shown above, however much political elites are willing to go along with the demands of Brussels – and this was indeed a crucial factor – it did not follow that implementation of conditionality was automatic because with some of its issues the compliance and cooperation of other domestic actors were necessary. In other words, governing elites and their
commitment to Euro-Atlantic integration are not entirely free agents in the enlargement process.

This paper has chosen to examine this problem for analytical purposes by discussing political elites under two separate headings – political will and political capacity. In the case of Romania, it is seen that this distinction is relevant to understanding elite behaviour in that country during accession. Some elite characteristics proved positive when explaining political will notwithstanding the cynical game of some top politicians in their dealings with Brussels. There was a pronounced pro-Europeanism, which helped to drive agreement with political conditionality, even though this was linked to national pride, the strong desire for financial advantages from membership, a dependency culture and a certain element of passing on national responsibilities to the European level (a feature evident in postwar Italy’s attitude to European integration). Romania’s political capacity was problematic even though some limited improvements occurred during accession as in parts of the state administration. Political and party-political interests came to the fore and complicated implementation of some of the conditions although in the end EU pressures with some persistence combined with the changing domestic situation to push through changes at a late stage. Altogether, Romania presented a weak policy-making environment and one that is likely to complicate the country’s early membership. This underlined that EU’s criticisms about the gap between rhetoric and action in Bucharest were justified; and, of course, this lay behind the EU’s decision to continue conditionality monitoring beyond the accession treaty but also into the early membership phase in the case of both Romania and Bulgaria.

What lessons may be drawn from EU enlargement given the angle adopted of political conditionality? First and foremost, conditionality’s prospects depended crucially on the dynamics of accession. The pressure on candidate countries to satisfy these and other conditions is relentless and takes clear advantage of the leverage that Brussels enjoys over them of promising membership at the final stage. Much therefore depends on unqualified elite commitment in candidate countries; and, this was present in Romania although some elites were slow in becoming converted (and here the onset of negotiations proved decisive). But, leverage notwithstanding, there was an understood (and sometimes expressed) trade-off between the EU’s credibility here and the readiness of prospective member states to produce change. In the case of Romania, this more or less worked but Brussels’ hand was strengthened by the extension of conditionality beyond the point adopted in the case of the 2004 enlargement.

By all accounts, EU pressures was the decisive factor in explaining Romania’s compliance with and implementation of conditionality – more so than on average with the EU-8 that joined in 2004. Romania was a difficult accession case, but that was recognised early on and this influenced the EU’s policy towards that country. But it is possible also to see in the Romanian case some sobering questions for the future. What will happen now that Romania has achieved its overriding objective of attaining EU membership? Will the newly constructed decision on sanctions work? Or, will somehow Romania’s governing elites relax compared with the accession years? Early
indications from the EU-8 about the completion of conditionality are mixed: with some of the issues other actors (notably NGOs) have taken over the role of pressure agents and it is true that backtracking moves by Bucharest would run into problems of credibility at home and abroad. Some in the enlargement literature have argued for a “status quo bias”, whereby new EU rules become “sticky”; but it is difficult however to see a continuing post-accession dynamic over conditionality matters and evidence of social learning from the experience of conditionality during accession has yet to appear. But the Romanian case is also indicative for future enlargement in that new candidate countries from the West Balkans are at least if not much more difficult cases than Romania. Whether the much tougher conditionality policy adopted by the EU since 2004 deals effectively with this greater challenge remains to be seen.
GLOBALIZATION, REGIONALIZATION AND THE EU-JAPAN-U.S. TRIAD

ADRIAN POP*

Abstract. The globalization triggers macro-regionalization, which, in its turn, generates micro-regionalization – the EU being a good example of both. Second, in virtually all scenarios of geopolitical future the recurrent theme is regionalism, which comes in various “shapes and sizes”. That is why maybe we should start to live with the idea of a sort of regionalization by default. Third, how the relationship among the members of the EU-Japan-U.S. triad will look like in future will depend to a large extent on how the American power is going to prevail within the Western world and how it is going to handle the reassertion of countries belonging both to the Western and non-Western worlds. The various possible outcomes entail a plethora of varieties of geopolitical realignments.

GLOBALIZATION AND REGIONALIZATION

The development of the regions is a crucial part of the emerging global order in the era of globalization. The two processes are closely intertwined, the regionalization – at both supranational and sub-national levels – being at the same time an intrinsic part of and a response to globalization.

For a long period of time, the debates concerning the regionalization were focused on trade and trade policies, especially when regional trade agreements were reinforced by liberal trade regimes. But globalization is a multifaceted phenomenon, comprising not only an economic dimension, but a social, political, security and cultural dimension, too. Accordingly, how the relationship between globalization and regionalization is taking shape depends on which dimension of globalization one is referring to.

From an economic viewpoint, the regionalization is triggered, to a certain extent, by the trans-national corporations’ quest for new markets and foreign direct investments. The regionalization of investments has become so important that affects the nature of production and trade. To take just one example, already in 1995 more than 10 percent of the Japanese companies’ output was produced outside Japan, as compared with 4 percent in 1986. Whereas nearly all goods produced by Japanese companies in the U.S. are sold on the American market, a significant part of consumer goods produced by Japanese companies’ branches in South East Asia is imported by Japan. In 1992, these imports represented 16 percent out of the total Japanese imports, as compared with 10 percent in 1982. As rapidly as they are attracted by favourable economic circumstances, the foreign direct investments are fleeing to other markets when these circumstances are

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changing and the more so when they are declining. As proven by the Asian crisis, starting 1997 the fleeing of capitals and the time needed for designing adequate response strategies have led to a dramatic destabilization of the economic and political set up of some countries.

The EU, as heir of the EEC, is the first economic region of the world. The Asia-Pacific region is characterized by an emerging regionalism focused on market economy development and regional cooperation promoted by organizations such as the Asia-Pacific Economic Cooperation (APEC), the Association of South East Asian Nations (ASEAN), and the South Asian Association for Regional Cooperation (SAARC). Established in 1994, the North American Free Trade Agreement (NAFTA) is the second most powerful form of regional economic integration, after the European one. Its significance should not be underestimated as it accomplished a significant shift in U.S. foreign policy, which started in the mid-1980s, from multilateralism and international cooperation to economic regionalism.¹

All three regional structures have already acquired a geopolitical personality. Moreover, each of the three big economic regions of the world has a leader which plays the role of an “engine”. That role is performed by Germany for the EU, by Japan for the Asia-Pacific region, and by the U.S. for the NAFTA region. Consequently, when we speak about competition among the three we should take into account the ability of the “engine” to “push” the region forward, securing the advancement of the region as a whole. From this point of view, ample evidence points to the fact that the EU is lagging behind U.S. and Japan in terms of high-tech products and services. The increased competition from both those developed countries and less developed countries such as China and more recently India have led key European countries to resort in 2005-2006 to a series of protectionist measures – a tendency which weakens the EU efforts to adapt to the challenges of globalization, including and most notably through enlargement.²

Turning to the political dimension of globalization in relation to the above-mentioned triad, things look quite differently. All three big players share the same commitment to democracy, and collaborative ties for securing stability at the global level, but whereas the U.S. upholds a unipolar world and are ready to use what Secretary of State Condoleezza Rice calls “transformational diplomacy” as a tool of exporting democracy worldwide³,

³ See Transformational Diplomacy, speech of Secretary of State Condoleezza Rice at Georgetown University, Washington, D.C., January 18, 2006, http://www.state.gov/secretary/m/2006/59306.htm and its commentary in “Public Diplomacy Watch”, January 24, 2006, http://www.publicdiplomacywatch.com/2006/01/transformational_diplomacy.html. The approach has been heavily criticized by Henry Hyde, chairman of the House of Representatives international relations committee and a Republican congressman: “A broad and energetic promotion of democracy in other countries that will not enjoy our long-term and guiding presence may equate not to peace and stability but to revolution ... There is no evidence that we or anyone can guide from afar revolutions we have set in motion. We can more easily destabilise friends and others and give life to chaos and to avowed enemies than ensure outcomes in service of our interests and security.” Quote by Martin Jacques, “Imperial overreach is accelerating the global decline of America”, Guardian, March 28, 2006.
the EU and Japan are in a favour of a multipolar one and are more reluctant to impose their political will upon other countries’ domestic affairs (see Annex 1). What is more, in the case of the EU, its failure to adopt the Constitutional Treaty and to articulate common positions during major international crises (including, most recently, the Lebanese one) as well as the divisions between big and small countries have made the efforts to develop a truly Common Foreign and Security Policy (CFSP) even more difficult, while the split between the “old” and “new” Europe in terms of opposing or supporting the U.S. war against Iraq has pointed out to both an ad-hoc regionalization between the more pro-European and more pro-Atlantic countries of the future EU-27 and an overall weakening of the Union over the long run.

From a security viewpoint, things are even more complicated. We live in a “global risk society” in which is no longer possible to externalize secondary consequences and threats which are intimately linked with the evolution of super-developed industrial societies such as global climate change. Globalization has exacerbated trans-national security threats to all states, obscuring somehow the traditional borderline between them. Security threats such as terrorism, the proliferation of weapons of mass destruction (WMD), illegal trafficking on drugs, radioactive materials, small and light weapons (SALW) and human beings, ethnic and nationalist conflicts, man-made or natural disasters and pandemics (one recent example being the avian influenza) have increasingly trans-national consequences. All these ask for the worldwide implementation of global agreements meant to counter them. But whereas the European Union and Japan are by and large committed to observe them, the United States has given way to unilateralist impulses more than ever. Within six months of taking office, the first Bush Administration pulled out of the Kyoto Protocol on global warming, announced its intention to withdraw from the Antibalistic Missile (ABM) Treaty, manifested its opposition to the Comprehensive Test Ban Treaty and the pact setting up the International Criminal Court (ICC), withdrew from establishing a body to verify the 1972 Biological Weapons Convention, and reduced the effectiveness of a U.N. agreement aimed at controlling SALW proliferation.

Among the most dramatic challenges to global security have been the various forms of international terrorism, compounded by the problem of failed and failing states. The gravity of these asymmetric threats to international stability and global security is significantly enhanced by the potential of the vast devastation that could result from the use of WMD or a large scale coordinated cyber attack directed against the global community’s critical information infrastructure and financial network. The main lesson of the terrorist attacks in New York and Washington, D.C. (11 September 2001) and their

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European counterparts in Madrid (11 March 2004) and London (7 July 2005) has been the fact that in order to efficiently combat the spread of terrorism big players as well as minor ones should cooperate in ways which are at the same time multidimensional, multilateral, flexible, consistent, and permanent. However, whereas the U.S. are firmly guided by the “pre-emptive strike” concept in their global war against terrorism, only the “new” Europe has aligned itself with the U.S. approach, as evinced throughout the 2003 transatlantic crisis. As for Japan, despite its growing military potential, it has only reluctantly sent some peace-keeping troops in Iraq, being securely entrenched in the anti-militaristic ethic generated by its post-war soul-searching process.

Whereas regional security arrangements are evolving more slowly and are likely to remain informal and flexible, against the background of a rising involvement of non-state actors and the collapse of internal control of weak, failing or failed states a micro-regionalization occurs at the sub-national level in the form of crime-ridden “black holes”. What is more, it might well be possible that using the new information technologies, non-state actors such as terrorists, illegal traffickers, rebel armies and extremist religious groups would get control over non-lethal means of generating violence thus putting an end to an essential characteristic of the nation-state, which is, according to Max Weber, the legitimate monopoly of violence.

As for the cultural dimension of globalization, one should bring into picture the local rather than the regional. According to Roland Robertson, the local should be perceived as an aspect of the global. In his view, globalization is a process by the help of which local cultures are at the same time concentrated and intersected (leading to a “clash of localities”). Due to this mutual interdependence, rather speaking about globalization and localization as two different processes, one should speak about glocalization. The latter, is creating not a unified global culture but a glocal culture which, according to Arjun Appadurai, has its own relative autonomy.

Geopolitical Future(s) and Grand Strategies

The great powers, as the main actors on the international stage, need a conceptual map in order to devise a sustainable global environment. This necessity is particularly felt in periods of global change such as ours. This need often translates itself into grand strategies. More often than not, grand strategies rely on scenarios of global future. The last couple of years have witnessed a proliferation of such scenarios, the bulk of them being (not surprisingly) American.

In the case of the EU, taking into consideration the failure of the Lisbon Agenda to achieve its goal, and letting aside the politically correct generalities comprised in the European Security Strategy (2003), only the European Neighbourhood Policy (ENP), could be considered something which remotely resembles to an emerging European grand strategy, as it entails the formation of a “ring of friends” surrounding the borders of the enlarged EU and its closest European neighbours, having as its building block the concept of proximity and as its

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7 Ibidem, p. 3.
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Theoretical foundation the concentric circle model.8

The Japanese grand strategy for the third millennium was synthesized by Takashi Inoguchi, after a thorough review of statements made by various Japanese opinion leaders – academics, journalists, bureaucrats, business persons, and politicians. He thinks that the Japanese grand strategy could be best described as a mix of three different scenarios, which he labels the Westphalian, Philadelphia and Anti-Utopian. The three scenarios have distinct geopolitical, geoeconomic, and geocultural features. In the Westphalian scenario the actors are “normal states”, the basic principle is state sovereignty, the behavioural modalities are balancing and bandwagoning, the key economic concept is national economy, and the key media is the state run radio-TV. In the Philadelphia scenario the actors are liberal democracies, the basic principle is the ideology of liberal democracy, the behavioural modalities are binding and hiding, the key economic concept is global market, and the key media is the cable TV network. In the Anti-Utopian scenario the actors are failing and failing states, the basic principle is loss of sovereignty, the behavioural modalities are “hollowing out” and collapse, the key economic concept is economic development, and the key media is the underground network/samizdat (see Annex 2). Speaking about a Westphalian-Philadelphia-Anti-Utopian mixed scenario of the global future, Inoguchi refers to the fact that whereas the basic framework will remain Westphalian, the waves of globalization (in the economic field), unipolarization (in the security field) and democratization (in the governance field) will strengthen the Philadelphia framework. In their turn, excessive Philadelphia practices are bound to lead to negative phenomena such as the peripheralization of many parts of the South, anti-globalization and anti-hegemonic movements and democratizing rhetoric which might eventually bring about an Anti-Utopian scenario.9

As for the Americans authors, they have envisaged different grand strategies, whose various approaches depart from opposite premises regarding the continuation or not of the prevailing U.S. hegemony. In addition to this, some of them have gone even beyond the traditional assessment of the geopolitical future broken down into short term (up to 5 years), medium term (5-10 years) and long term (10-20 years) scenarios, venturing to envisage how the world would look like up till the middle of the current century.

The Pentagon’s view on what should be the American post-9/11 grand strategy was formulated by Thomas Barnett, a professor at the U.S. Naval War College, in an essay entitled Pentagon’s New Map (2003) and then in a book based on it, The Pentagon’s New Map: War and

8 For the ENP promoting a pan-European and Mediterranean region organized according to the concentric circle pattern see Adrian Pop (coordinator), Gabriela Pascaru, George Anglitoiu, Alexandru Purtărescu, Romania and the Republic of Moldova – between the European Neighbourhood Policy and the Prospect of European Union Enlargement, European Institute of Romania, Pre-Accession Impact Studies III, Study No. 5, Bucharest, 2006, p. 163, available also at http://www.ier.ro/PAIS/PAIS3/EN/S1.5_EN_final.PDF.

Peace in the Twenty-first Century (2004). According to Barnett, the world is divided into two camps, the nations that have successfully implemented globalization (the Functional Core) and the nations that have rejected globalization (the Non-Integrated Gap). Examples of Core states are “North America, much of South America, the European Union, Putin’s Russia, Japan and Asia’s emerging economies (most notably China and India), Australia and New Zealand, and South Africa, which accounts for roughly four billion out of a global population of six billion.” Examples of Gap states are “the Caribbean Rim, virtually all of Africa, the Balkans, the Caucasus, Central Asia, the Middle East and Southwest Asia, and much of Southeast Asia.” On the borders between the Core and Gap states are the so-called Seam states, often used for exporting terrorism and instability from the Gap to the Core. Examples of Seam states are “Mexico, Brazil, South Africa, Morocco, Algeria, Greece, Turkey, Pakistan, Thailand, Malaysia, the Philippines, and Indonesia.”

Looking at a Mercator projection of the world, solution set countries lie in a ring along the edges and potential problem countries largely rest in the middle forming a black hole of trouble for those embracing globalization (see Annex 3). The disconnectedness vis-à-vis globalization defines the current and future threats to global security. Consequently, recent military actions, as well as future one, are and will be conducted in the Gap states or along the Seam states continuously throughout the 21st century, until globalization takes hold. In order to win the war on terror, which he views as a result of problems with globalization, the U.S. should increase the

Core’s immune system capabilities for responding to 9/11-like system perturbation events, work with the Seam states to firewall the Core from the Gap’s exports (terror, drugs, pandemics), and shrink the Gap. This could be done by “exporting” security and globalization to the Seam and Gap states. In order to do that, the U.S. military should be reorganized into two components, a heavy force structured much like today’s military (Leviathan) and a light force designed for nation building (System Administration). Barnett’s solution for world stability is to reduce the size of the Gap by recreating Iraq as a functional society, let China become a near-peer of US, removing North Korea’s Kim Jong Il, create an Asian NATO, depose Iran’s mullahs, develop an Asian NAFTA, bring free trade to all of the Americas, admit new states to the United States, bring Africa into the Core by 2050, and – on the energy security side – move from burning oil to natural gas.

In a follow-up study written with Professor Bradd C. Hayes, Barnett proposed four scenarios for the evolution of globalization according to the states’ ability to set new rules for guiding the globalization and to cooperate for containing those who oppose it, including super-empowered individuals such as Ossama bin Laden and transnational networks such as Al-Qaeda. “If new rules don’t emerge and the developed world doesn’t get together to challenge those who oppose globalization, the world could remain a very messy place in which to live. We call this future Globalization Traumatized. If the world cooperates to advance globalization, but fails to adopt a new rule set, economic growth will proceed haltingly and governments will be

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reactive rather than proactive. We call this future Globalization Compromised. Those are the darker scenarios we posit. On the brighter side, if developed nations agree on some broad rules directing how globalization proceeds (rules, for example, that would protect workers, the environment, and tax bases), but fail to cooperate when dealing with those opposing globalization, they should expect to be plagued by continual, large-scale protests. We call this future Globalization Stabilized. The best scenario would see developed countries cooperating to ensure that the world’s economy expands smoothly and justly. They agree on rules that protect workers’ rights, local cultures, and the environment. They also cooperate to contain disaffected groups and work to bring opponents into the fold. We call this future Globalization Normalized. 11

Alternatively, a comprehensive survey conducted by the National Intelligence Council with non-governmental experts on the main drivers of global change and how they would interact through 2015 led to four scenarios of global future. The four scenarios could be grouped in two pairs: the first pair contrasting the “positive” and “negative” effects of globalization – Inclusive Globalization vs. Pernicious Globalization; the second pair contrasting extremely competitive but not conflictual regionalism and the plunge into regional military conflict – Regional Competition vs. Post-Polar World. From the viewpoint of this study, of particular interest are not so much their differences, but the generalizations across the scenarios. In all but the first scenario, globalization does not create widespread global cooperation. Rather, in the second scenario, globalization’s negative effects promote extensive dislocation and conflict, while in the third and fourth, they bring about regionalism. In all four scenarios, countries negatively affected by population growth, resource scarcities and bad governance, fail to benefit from globalization, are prone to internal conflicts, and risk state failure, the effectiveness of national, regional, and international governance and at least moderate but steady economic growth are vital, and the U.S. global influence diminishes. 12

Zbigniew Brzezinski’s short term and medium term scenarios of future geopolitical realignments start from the premise that “America does not have, and will not soon face, a global peer. There is thus no realistic alternative to the prevailing hegemony and the role of U.S. power as the indispensable component of global security”. 13 Brzezinski’s optimistic scenario envisages a sort of U.S.- EU global partnership 14 in which the two entities

14 As Brzezinski puts it: “an essentially multilateral Europe a somewhat unilateral America make for a perfect global marriage of convenience. Acting separately, America can be preponderant but not omnipotent; Europe can be rich but impotent. Acting together, America and Europe are in effect globally omnipotent.” Ibidem, p. 96.
would act together, becoming the “core of global stability,” on the one hand, and a “genuine European-Russian bonding” facilitated by Russia’s need for help in order “to develop and colonize Siberia”, on the other. As for the Far East, “the most likely pattern will involve the interplay of China’s overt rise to regional power, Japan’s continued but ambiguous acquisition of increasingly superior military power, and America’s efforts to manage both”. In order to foster a sort of informal Chinese-Japanese-American triangle in the region, the U.S. will have to promote a stable and cooperative relationship with China and to encourage Japan to “become more politically engaged” against the background of its cautiously but steady military build-up. On the long run, if NATO would continue to expand and Russia would become one way or another “an extension of it”, the circumstances would be ripe for setting up a trans-Eurasian collective security structure that would involve Japan and China and transforming the G-8 into a G-10, comprising China and India.15

The pessimistic scenario put forward by Brzezinski would be a severe U.S.-EU rivalry stimulated by a Franco-German alliance combined with Russia’s relapse into a nationalistic dictatorship, in the western regions of Eurasia, and an exclusive Asian economic and possibly security regionalism spurred by China, followed by Japan’s rush into remilitarization, in the eastern regions of Eurasia. The resulting anti-American pan-Europeanism and pan-Asianism, especially if aggravated by U.S. unilateralism could not only push the U.S. out of Eurasia, but halt any attempts to forge a framework for global security16 and plunge the world of the twenty-first century into a new twentieth century regionalism. That particular scenario, envisaging an enlarged EU together with Russia and East Asia (Japan and China) becoming counterweights of the U.S., is shared also by Charles A. Kupchan, the persuasive advocate of the need of a new American grand strategy in order to smooth the transition from a unipolar towards a multipolar world.17

Other scenarios are those proposed by a June 2005 Power and Interest News Report (PINR). It envisages a period of short term stability during which each of the major regional power centres would have a stake in preserving it “either by a perceived need to retrench or by the goal of protecting processes of economic and military development.” That period would be followed on the medium and long term by the rise of the EU, China, India, Brazil and possibly Russia to world power status and the turning of “several states that are currently either regional powers or are themselves under strong influence or domination by the world’s major states” into either “second wave” powers or major hurdles to global stability and security, including Indonesia, Egypt, Iran, some Western and Central African states (Nigeria, the Democratic Republic of Congo Ethiopia, Uganda and Rwanda), Vietnam and the Philippines. There are also good prospects for China, India, Brazil and other states to establish strong links with these countries which would complicate even further the geopolitical

15 Ibidem, pp. 103, 111, 115, 120-123.
16 Ibidem, pp. 91, 103, 126-127.
17 Charles A. Kupchan, op. cit., pp. 29 and 63.
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picture. "This possible development – concludes the report – demands that Washington and other power centres around the world prepare themselves not just for the more obvious geopolitical challenges stemming from rapidly emerging new powers, but also for the upcoming difficulties and uncertainties in dealing with a dozen new regional players."\(^1\)

Obviously, projections longer than 20 years are venturesome because possible contingencies multiply at a geometrical progression. However, one possible useful, although schematic way to go beyond sheer guess in predicting long term plus geopolitical future (up to 50 years) and understand globalization is through the lenses of long cycles. According to the world-system theory promoted by Immanuel Wallerstein, globalization is far for being something new. In fact, it is the business as usual way of how capitalism works. For him, there is no evidence that the world is now more globalized than it was throughout la belle époque period, before the First World War. What is really new in the post-war era, argues Wallerstein, is the fact that after a period of roughly 20-25 years when the U.S. hegemony was at its peak after the Second World War (1945-1965/1970), due to the economic reconstruction of Western Europe and Japan, by the 1970s we could speak of a triad of centres of capital accumulation, whose forging inaugurated the competition for shares in the world market and for control of the next generation of cutting-edge industries. The U.S. tried to control the political consequences of this economic power shift by setting up the Trilateral Commission and then by escalating the Cold War. Starting 1970 the world experienced one long Kondratieff B-cycle (downswing) characterized by a sharp reduction of profits from productive activities. This, in turn, led to attempts "to export the consequences of the downturn, especially the unemployment, to each other" and "a shift in emphasis from accumulating capital via productive profits to accumulating capital via financial manipulations, in which the U.S. has retained an advantage because of the role of the dollar as the reserve currency".

For the first half of the 21\(^{st}\) century the world-system theorist envisages a return to a Kondratieff A-cycle (upswing) during which cutting-edge industries based on informatics, biotechnology and new energy resources, largely monopolized, will toughen the competition among the triad. In order "to ward off the European threat", the U.S. and Japan will unite their economic efforts. Other two big actors, China and Russia, provided they manage to preserve their national integrity, will negotiate their entering in the resulting dual structure of economic power: China into the U.S.-Japan regional economic complex and Russia into the western European one.\(^2\)

Letting aside the issue of globalization being merely the working of the capitalist world-system, which is


a debatable point in itself, there are several weak points in Wallerstein’s scenario. First, taking Wallerstein’s definition of a hegemonic state, namely a state that is imposing a structure of world order upon the world-system, with the exception of few years after 1945, the U.S. hegemony never existed throughout the bipolar era. It would be much fair to say that, by and large, because the omnipresence of the two super-powers – directly or indirectly – on the global stage, the bipolar era was one of co-hegemony of the U.S. and Soviet Union. Second, the fact that the U.S. hegemony has started to falter since 1970 seems contradicted by the leading role the U.S. have played in the Gulf War as well as in the wars in Kosovo, Afghanistan and Iraq. Third, it is not clear at all that China would accept the role of a junior partner of the U.S.-Japan alliance and Russia would opt out for an energy security deal with the EU instead of a strategic one with China and India. It is much more likely that China and Russia, provided that they manage to preserve their territorial integrity (which is not entirely sure) and overcome the factors that undermine attempts to bring the two countries closer together, would try to consolidate the close ties developed in recent years, in order to promote their mutual interests in energy supplies and defence sales and to counter the perceived U.S. hegemony.

Fourth, Wallerstein’s scenario of future geopolitical realignments is rooted in two nowadays debatable theoretical and epistemological frameworks: the Westphalian tradition; and the conceiving of the world as being in a linear upward curve in a past-present-future time continuum. In a time of “bifurcation” (as Ilya Prigogine has aptly called it) and “butterfly effect”, when the nation-state is in decline, and we are facing an increase in the privatization of power by legal and illegal groups, it is difficult to envisage which new actors apart states may step into the global arena – criminal groups, clans, tribes, provinces, regions, organizations etc – which may lead future geopolitical realignments to look very different to the ones we were used to.

Conclusions: Regionalization by Default and Geopolitical Realignments?

At least three main conclusions could be inferred from what has been assessed. First, the globalization triggers macro-regionalization, which, in its turn, generates micro-regionalization – the EU being a good example of both. Second, in virtually all scenarios of geopolitical future the recurrent theme is regionalism, which comes in various “shapes and sizes”. That is why maybe we should start to live with the

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20 Even if one concedes that globalization is nothing new, there are at least three new developments in the way capitalism has been working in the last 100-150 years: “the integration of the world in terms of the speed of communication and the scale of trans-national exchange in cultural, economic and political matters”; the formation of “some 50-60,000 trans-national co-operations”; and “the emergence of a rather dense network of international organizations, which, to some extent, seem to control the workings of the interstate systems, as well as of the workings of capitalism”. See “Debate on the Propositions”, in Immanuel Wallerstein, Armand Clesse (eds), op. cit., p. 65.


22 The “butterfly effect” refers to the fact that we live in a world that is so interdependent that a small change somewhere could change the course of events completely.

23 “Debate on the Propositions”, in Immanuel Wallerstein, Armand Clesse (eds), op. cit., p. 93
idea of a sort of regionalization by default. Third, how the relationship among the members of the EU-Japan-U.S. triad will look like in future will depend to a large extent on how the American power is going to prevail within the Western world and how it is going to handle the reassertion of countries belonging both to the Western and non-Western worlds. The various possible outcomes entail a plethora of varieties of geopolitical realignments. The investigation of possible institutional responses to these significant globalization challenges falls outside the scope of this study.24

Annex 1

Unipolar vs. Multipolar World

24 Nevertheless, one cannot help asking if Ulrich Behr wasn’t right in stating that a possible alternative to the national state and the global hegemonic state is the trans-national state. The trans-national states are not national, international or supranational states. Within trans-national states, the system of political coordination is organized along the axis globalization-localization. Therefore, trans-national states are glocal states, provinces of the global society which are struggling to earn their position on the global market.
Outline of Westphalian, Philadelphian, and Anti-Utopian Legacies

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Annex 3

The Functioning Core vs. the Non-Integrated Gap

THE BALKANS BETWEEN THE EU AND NATO: FOCUSING ON THE FORMER YUGOSLAVIA

MAMORU SADAKATA

Abstract. The fragmentation of Yugoslavia has wrought extensive political and social changes in the Balkans and Europe more generally. After the collapse of communism and the breakup of Yugoslavia, many Balkan countries have transformed their political system and have begun to forge new foreign and security policy. Some of them have already joined the EU and NATO, and some are about to access these organizations. But the Western Balkan states seem to be farther in the future. In regard to the former Yugoslavia, the United States, European states and international organizations, such as the EU, NATO and UN, have attempted to engage and manage this breakup on an individual and collective basis. They have greatly influenced the process of the post-conflict nation building of this region. From this viewpoint, the paper discusses the political and social transformation of the Balkans after the breakup of the Yugoslav conflict, and the role of the EU and NATO in the process of the democratization and nation building in the former Yugoslavia. Moreover, attention is paid to the features of the involvement of the EU and NATO in the former Yugoslav conflict. In the process of Yugoslav fragmentation one can see the ‘Eastern Question’ revisited and the ‘Powder keg of Europe’ once again rising to its brim.

1. THE END OF COLD WAR AND THE DICHOTOMY BETWEEN CENTRAL EUROPE AND THE BALKANS

Following the end of the Cold War, the meaning of ‘Balkan’ changed considerably in Eastern Europe. ‘Eastern Europe’ as a political term disappeared and a new dichotomy came to emerge – a dichotomy of cultural and historical differences between Central Europe (the Czech Republic, Poland, and Hungary) and the Balkans (Yugoslavia, Romania, and Bulgaria). This dichotomy implied past experiences of parliamentary democracy and economic development in these former socialist countries. Historically, the division line between Central Europe and the Balkans overlaps with that of the Habsburg and Ottoman Empires. In the case of the former Yugoslavia, this line cut the country into two halves, with Slovenia and Croatia belonging to Central Europe and the other republics to the Balkans. The Chicago Tribune made the following statement: “A new curtain is falling across eastern Europe, dividing north from south, west from east, rich from poor and the future from the past. As Hungary, Poland and the Czech Republic sprint into the future of democracy and market economics, Romania and Bulgaria slide into Balkan backwardness and second-class citizenship in the new Europe.” This distinction between Central Europe and the Balkans was evident in the way in which democratic transitions in Central Europe have been supported, and in which conflict in the former Yugoslavia

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has been managed. While Central Europe unquestionably featured prominently in the strategic plans of European and transatlantic institutions, the place of the Balkans in these plans was not so clear throughout the 90s. The US directed its efforts at preparing Central European states for membership of Euro-Atlantic structures. On the other hand, the EU took partial and in some cases contradictory action, due to changing policy preferences and internal problems.

“Balkanness” was frequently quoted as both a cause and characteristics of the conflict. Such words as ‘genocide’, ‘ethnic cleansing’, and ‘Vandalism’ (destruction of cultures) were bandied about to express the ‘barbarity’ of the Balkan conflict, foreign to ‘civilized’ Europe. Here it is obvious that the word ‘Balkan’ is used not in the geographic sense, but in the sense of creating an ‘other’ within the borders of Europe and the Western civilization. In the West, the dichotomy between Central Europe and the Balkans is frequently interpreted as the East-West opposition.

On this point, M. Todorova notes as follows. East is a relational category, depending on the point of observation. The same applies to the Balkans with their propensity to construct their internal orientalisms, aptly called the process of “nesting orientalisms”. A Serb is an “easterner” to a Slovene, but a Bosnian would be an “easterner” to the Serb although geographically situated to the west; the same applies to the Albanian who, situated in the western Balkans, are perceived as easternmost by the rest of the Balkan nations. Greece, because of its unique status within the European Union, is not considered “eastern” by its neighbors in the Balkans although it occupies the role of the “easterner” within the European institutional framework. For all Balkan people, the common “easterner” is the Turk, although the Turk perceives himself as Western compared to real “easterners”, such as Arab. This practice of internal orientalisms within the Balkans corresponds to what Erving Goffman has defined as the tendency of the stigmatized individual “to stratify his ‘own’ according to the degree to which their stigma is apparent and obtrusive.

In related to this critical issue, S. Zizek puts an interesting question. “Where do the Balkans begin? The Balkans are always somewhere else, a little bit more towards the southeast.... For the Serbs, they begin down there, in Kosovo or in Bosnia, and they defend the Christian civilization against this Europe's Other; for the Croats, they begin in orthodox, despotic and Byzantine Serbia, against which Croatia safeguards Western democratic values; for Slovenes they begin in Croatia, and we are the last bulwark of the peaceful Mitteleuropa; for many Italians and Austrians they begin in Slovenia, the Western outpost of the Slavic hordes; for many Germans, Austria itself, because of its historical links, is already tainted with Balkan corruption and inefficiency.”

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4 M. Todorova, op. cit., p.58.
2. THE EU AND THE STABILITY PACT FOR SOUTH EASTERN EUROPE

As the Eastern bloc collapsed, considerable differences surfaced between those countries which had been a part of it. However, the vast majority of them shared the common aspiration of joining the EU. The EU functions as a reference point for the modernization of aspiring transitional candidate members. Europeanization has become a series of operations leading to systemic convergence through the process of democratization, marketization, stabilization and institutional inclusion.\(^6\)

The EU had seized on the former Yugoslav conflicts in an attempt to demonstrate its ability to prosecute a European foreign and military policy, but it had failed twice. In Bosnia in 1995, as in Kosovo in 1999, initial European efforts resulted in the United States eventually taking control of negotiations and leading its NATO allies into conflict. According to Holbrooke, Dayton shook the leadership elite of post-Cold War Europe. Some European officials were embarrassed that US involvement had been necessary.\(^7\)

The EU intervention and assistance policies in the Balkans have mainly been shaped in response to emerging crisis, most frequently on a purely ad hoc basis. Although in 1996, the EU developed its Regional Approach inviting the Balkan countries to implement regional cooperation, the approach lacked in substance and concrete measure of support. However, a turnaround in EU policies came immediately after the NATO bombardments of FR Yugoslavia in the spring of 1999.

In view of its failure to stabilize the Balkans throughout the 1990s, the international community, and in particular the EU, decided to elaborate a new, more comprehensive, and longer-term strategy for the Balkans. This led to the adoption of the “Stability Pact for South Eastern Europe” in Cologne in June 1999, which was designed to assist the reconstruction efforts of the seven Southeastern European countries (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania and Yugoslavia) which had been affected by the Kosovo conflict.\(^8\)

The Stability Pact was put forward by countries from the Balkan region, and by major donor countries and international organizations such as the EU, World Bank, EBRD (European Bank for Reconstruction and Development), and the OECD (Organization for Economic Cooperation and Development). The Stability Pact represented a political commitment by all the countries and international organizations concerned to a comprehensive, coordinated and strategic approach to the region. Crisis management would be replaced by preventive diplomacy, and there would be a focus on democratization, human rights, economic development and reconstruction, and internal and external security.

For European countries, this Pact was interpreted as a means to link all Balkan states to mainstream European political processes, and in particular to EU integration and the EU enlargement.

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process. Briefly stated, it was an attempt to 'Europeanize' and 'de-Balkanize' the Balkans.9 The Stability Pact is the first creative response to a historic challenge to create a peaceful, stable, and prosperous region in an area where such attributes have been rare.

3. TERMINOLOGICAL PROBLEM BETWEEN THE BALKANS AND THE SOUTH-EASTERN EUROPE

The most important aspect of the Stability Pact is the fact that the Balkans are finally perceived as a part of Europe. This is expressed in the Pact's consistent use of the term 'South Eastern Europe' instead of 'the Balkans'; the drafters of the Pact explicitly decided to shun the term 'the Balkans'. This was an attempt to transform perceptions that the region is 'backyard', 'peripheral', or that it is a 'border' or 'transition zone' and promote the notion that the region is part of Europe.10

So, the substitution of ‘Balkans’ with ‘Southeastern Europe’ is significant. Moreover, the principle of inclusiveness is further underlined by the use of the term 'countries of the region and their neighbors'. References to Europe and to European integration make it clear that the Stability Pact is intended to be something of a springboard towards the ultimate goal of European integration for the region.11 The term ‘Southeastern Europe’ is positive, compared with the popular negative connotations possessed by the term ‘Balkans’ and reflected in terms such as ‘Balkanization’. But the term also contains the promise of a brighter future. EU strategies to establish peace and promote regional democratization entail redefinitions of what the region is. The term ‘Southeastern Europe’ has been introduced to convey the idea of an integrated European region.12

On this terminological problem, N. Svo-b-Dokic clearly compares these two terminologies. Regional self-identification, expressed as either acceptance or rejection of the notion of Southeast Europe or Balkans, reflects today the spiritual background of the positioning of the Southeast European countries and societies in Europe and the different value systems that such positioning may stand for. The Balkans appears to be the term that is primarily associated with the historical close links and historical similarities between this part of Europe and the Near East that were established and maintained within the Ottoman Empire. On the other hand, Southeast Europe is associated with modernization of the area and its cultural and conceptual closeness to Western Europe, developed mainly under the German and Austrian influences.13

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10 Ibid., p.112.
12 Ibid., p.1.
13 N. Svob-Dokic, “The Transitional Changes in the Scientific Systems of Southeast European Countries”, V. Francicovic and H. Kimura eds, op. cit., p.456; The Balkans is burdened with very negative connotations. Stereotypes of cruelty, irrational, emotional and uncivilized behavior are ascribed to the Balkan heritage. The attempt to re-integrate the areas economically, politically, and perhaps, culturally has been strongly resisted by the nationalist movements and rejected through the processes of building up separate national states. The EU strategies to establish peace and support democratization in the area are bringing forward an attempt to redefine it conceptually. Following such ideas, Southeastern Europe has been re-introduced to express the main idea of turning the whole area into an integrated European region. N. Svo-b-Dokic “Balkan versus Southeastern Europe”. N. Sovob-Dokic ed., Redefining Cultural Identities? (Culturelink Joint Publication Series No.4) Zagreb, Institute for International Relations, 2001, p.40.
4. DISCORD BETWEEN THE EU AND NATO IN CONFLICT RESOLUTION

As it is clear that the countries of the region lack power and strength to solve the problems on their own, and there is certainly no alternative, only the American and the European policy remain as relevant actors that will in part compete, and in part undertake joint activities in order to accomplish set goals.  

The international community, in particular the West, was urged to manage the conflict that followed and to stabilize the region. However, the engagement and intervention by the West reflected the competition for hegemony within the West itself and their dichotomous view of the cultures between Central Europe and the Balkans.

Economic benefits are certainly very important to the European Union. By defining the regional cooperation as an alternative to instability and possible new war, the EU has clearly announced its goal: advancement of cooperation between the neighboring states and the creation of conditions for preventing possible confrontation.

The European approach is based on well-established and already tested methods of regional integration, which have yielded so far positive results and which are regarded by the EU as a prerequisite for potential integration of a certain region into the European one. The American SECI (Southeast European Cooperative Initiative), on the other hand, is designed with prospects to assembly a larger number of countries, to diminish animosities between former enemies, by the means of which it would accomplish some higher strategic objectives: securing peace and stability and eliminating the Russian influence and presence in the area.  

Discord between the EC (EU) and the United States over leadership regarding European security was a major problem. The United States tried to play a leading role in the framework of NATO, while the EU began working to have its own defence organization not reliant on the United States. For Europe, the Yugoslav conflict was a European affair and, therefore, an unavoidable problem. However, for the United States, it was a case study for the construction of the new world order.

America made it quite clear already at the time of NATO-led military operation that the Europeans would have to deal with the reconstruction issue in wider terms. Having given immediately thumbs up to the idea of the Stability Pact for South-Eastern Europe, the American policy supported the Pact as a joint Euro-American Project. During the preparations, as well as during the NATO action itself, the USA didn’t actually suffer great material losses and after the intervention they have been trying to pass the bill for reconstruction works over to the EU.

The American strategy was displayed again which only highlighted the American primacy and at the same time it showed clearly that Europe could only represent a second-rate ally of the unipolar global power. If the burden of the reconstruction on the Balkans falls to the maximum extent on Europe, then

15 Ibid., p.61.
it is to be expected that euro won’t get to a real rival to dollar.\textsuperscript{17}

There is an additional nuance that separates the West Europeans from their American counterparts. In the non-Yugoslav Balkans, the war in the former Yugoslavia is referred to exclusively as the “Yugowar” or the war in Bosnia. In Western Europe, it is usually defined as the war in ex-Yugoslavia or in Bosnia, although there is occasional mention of a Balkan war. In the United States, the war is usually generalized as “Balkan war”, although there is occasional mention of the war in the former Yugoslavia.\textsuperscript{18}

\textbf{5. NATION BUILDING AFTER DAYTON AND INTERNATIONAL ORGANIZATIONS}

In the post-Cold War era, international organizations such as the United Nations, NATO, the EC (EU) and CSCE found themselves in a situation where they needed to find new ways of legitimating their cohesive international roles without the framework of the Cold War. The language of democratization, marketization and global ethics has provided a new set of ‘mission statements’ that are particularly suited to the needs of the new era.\textsuperscript{19}

The period of post-Cold War era is also seen as the age of globalization. In response to these drastic political and economic changes, international organizations have been guided or influenced by the notions of ‘liberal internationalism’ and ‘democratic peace’, whether they liked it or not.

International organizations have adopted democratization as a pillar for nation-building projects in post-conflict countries. Theoretically, their involvement in democratization is based on the assumption of the so called ‘democratic peace theory’, which states that democracies rarely go to war with each other, and therefore assumes that an increase in the number of democratic states would imply, and indeed encourage, a more secure and peaceful world.

However, in practice, we can say that democratization possesses some unique characteristics. What first needs to be emphasized is that democratization is a process, a coherent cooperative project with no fixed definitions and time limits, a coherent mechanism that can last as long as its practitioners require. This is due to the circular nature of the democratization approach itself, which tends towards the problematization of recipients of democratization assistance, making self-government increasingly less likely.\textsuperscript{20} Based on this assumption, the democratization process has provided an ideal opportunity through which international organizations have been able to reconstitute their legitimacy and given them the capacity to adjust themselves to post-Cold War international relations.

In the light of the role of international organizations in nation-building, the Bosnian case was of great importance in that it enabled the organizations to redefine their legitimacies and reshape themselves in the post-Cold War World. According to Chandler, the

\begin{itemize}
  \item \textsuperscript{17} R. Vukadinovic, \textit{op. cit.}, p.139.
  \item \textsuperscript{18} M. Todorova, \textit{op. cit.}, p.185.
\end{itemize}
democratization process, through linking democratization to international institutional mechanisms, has ensured that the international administration overseeing the post-conflict reconstruction of Bosnia will be prolonged for as long as it is in the interests of the major international powers to use the country as a focus for international cooperation. There are always new problems and new institutional involvements. As a result, democratization in Bosnia, far from realizing democratic and multi-ethnic civil society, has maintained societal divisions and reinforced the nationalist power bases that control Bosnian society.

Nevertheless, in the international community, there is little challenge to the democratization approach and little consideration given to the impact of the international administration on the Bosnian political sphere. As to the assessment of democratization, the liberal critics view the only limitation to internationally imposed democratization as being the lack of will of international community itself. On the other hand, the conservative critics argue that the problem with international policy is that Bosnian cultural and ethnic divisions make it an idealistic proposal which could entail international embroilment in Balkan affairs with little possibility of a solution to the complex questions of ethnic division.

In the drive towards extended international intervention, it was clear that the ‘division of labor’ of international organizations in nation-building in Bosnia, had less to do with the problems of Bosnia itself and more to do with the search for legitimacy and policy-coherence on the part of international organizations. According to M. Cousens, senior officials at most major implementing agencies persistently described a chaotic blend of different mandates, incompatible timetables, and divided leadership among their respective executive bodies.

Moreover, what should be pointed out is that ‘market share’ competition or a turf battle was clearly revealed in the division of labor among international organizations. We can easily detect here disagreement between the US and the UN, and also between the US and the EU. The US-brokered Dayton accords confirmed the unquestionable predominance of the United States even within the European continent, vis-à-vis its own Western European and EU allies and the successor to its former rival, Russia.

The allocation of mandates under the Dayton Accord is as follows: The Europeans, in the restrictive EU sense of the term, were granted the High Representative, but the United State, through NATO, obtained the first role in the military field. The pan-European (and North American) body, the OSCE, was given the elections, arms control, and regional stability, and part of human rights and democratization, significantly with an American at the helm of the Bosnia and Herzegovina mission.

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22. Ibid., p.179.
6. BALKAN GOVERNANCE AND THE INDIGENOUS APPROACH

Confronted with difficulties inherent in Balkan governance, we have to pursue a more indigenous approach. As Bugajski suggests, the indigenous approach should be introduced into the stability project. According to Bugajski, without more emphasis on “indigenization”, democratization, the marginalization of extremists, and structural economic reform, long-term security could be seriously undermined.25 The indigenous approach need not entail isolation or segregation which would surely entail a re-Balkanization of the region. On the contrary, the indigenous approach seeks an appropriate balance, in both Bosnia-Herzegovina and Kosovo, between international engagement and indigenous self-dependence. The EU and other international organizations should re-examine the meaning and relevance of European concepts such as democratization and civil society, in the context of the history and social development of this region.

It is important to understand that the Stability Pact is not product of a dialogue; instead, it is an institution imposed onto the Balkan states by the international community. It sprang from repeated failures on the part of the EU to deal with the mounting crisis in Kosovo and in the earlier wars in Croatia and Bosnia.26 Moreover, international organizations have to cultivate civic actors to participate in the decision-making process, and implement stability projects for the democratization and reconstruction of civil society. For their part, Balkan peoples have to boldly tackle the social inertia inherited from communist regimes, and consciously and willingly participate in the democratization processes of their own societies.

Viewed in this light, the indigenous approach can be regarded as the only means by which to put the governance of the Balkans on a sound footing. As Carothers claims, transitional countries will not necessarily move steadily along the assumed path from opening and breakthrough to consolidation. Above all, Balkan countries have not made a straightforward transition from authoritarianism to democracy. Almost all the Balkan countries belong in Caruthers’ gray zone, characterized either by feckless pluralism or dominant-power politics.27 To consolidate a genuinely transition to democracy, Balkan countries and international institutions should recognize that the indigenous approach provides effective and appropriate means for democratization and the cultivation of indigenous Balkan governance.

26 S. Vucelic, op. cit., p.115.
THE IMPACT OF EU ACCESSION ON THE DEVELOPMENT OF ADMINISTRATIVE CAPACITIES IN THE STATES IN CENTRAL AND EASTERN EUROPE. SIMILAR DEVELOPMENTS IN RUSSIA?

ALFRED E. KELLERMANN

Abstract. The developments of the civil service and administrative reform in Central and Easter European countries and in Russia are more or less similar. For the Central and Eastern European countries explicitly EU Membership is mentioned as an incentive for reform, the accession criteria have even been enlarged with horizontal administrative capacities, whereas for Russia there are no explicit references to incentives for reform.

INTRODUCTION

In the following we will analyze and assess the impact of EU accession on the development of the administrative capacities of the ten New Member States in Central and Eastern Europe. One of the first assessments is that if these countries will not have adapted their administrative capacities in time, this will cause problems for the functioning of the Union, as they cannot implement the community obligations effectively and in time. The general development of administrative capacities of these countries has been analyzed and assessed in several EC Commission reports. In these country reports the main factors that influence the development of modern and effective systems of public administration have been identified. After several years an increasing importance has been attached to meeting also administrative capacity requirements and to improve the quality of the administrative systems of the candidate states.

As a consequence general administrative capacity criteria were developed late in the process of defining the EU membership criteria, which were in a general way defined in the Copenhagen European Council Summit Conclusions in 1993.

The fulfillment of general administrative capacity requirements have been added among many criteria for EU Membership and were a relatively minor issue compared to democracy, market economy and acquis implementation capacity criteria.

The assessment of administrative capacities has been complicated by the lack of competencies of the European Union with regard to public administration. The European Commission, which plays a central role in the enlargement process, lacks moreover the necessary expertise. Therefore the debate on administrative criteria for EU membership for a long time has been limited mainly and especially to a debate on technical administrative capacities to implement the acquis communautaire.

Horizontal administrative capacities (professional civil service, well-developed accountability system, clear administrative structures) were assessed in a rather general and global way in the Commission Opinions and the

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Regular Reports on progress, due to lack of competences and powers of the EU in this area. The overall opinion was that the administrative organization of the member states belongs to the powers and sovereignty of the member states. However there are also areas where the Member States have to adapt their public administration because of several sources of indirect influence.

First the obligation by the Member States to fulfill the obligations arising out of EU membership. The Member States must be able to ensure the effective participation of its State in the EU Decision-making process, be able to ensure timely-implementation of Regulations, Directives and Decisions etc. etc.

Secondly as the Union respects the protection of Human Rights, its Administration and Courts must be able to guarantee the protection of Human rights. The Member States must take care in this case that system of legal protection by the courts will function effectively.

The 1999 Regular Progress Reports on EU Enlargement used for the first time a new assessment system for the analysis of horizontal administrative capacities. The assessment system was developed by the SIGMA programme, which is funded mainly by the EU PHARE programme. The development of this assessment mechanism marks the final stage in the process of defining horizontal capacity requirements for EU Membership.

The baseline assessment of SIGMA covered the following six core areas:

- Policy-making and coordination machinery;
- Civil service (legal status; accountability, efficiency in management, professionalism)
- Financial Management and Public Expenditure
- Public Procurement
- Internal Financial Control (presence of management control systems and procedures, functionally independent internal audit, actions against irregularities)
- External Audit (Meeting auditing standards, reporting regularly, fairly and in time).

In fact SIGMA has enlarged the accession criteria for EU Membership and therefore EU Membership is in the countries in Central and Eastern Europe the main incentive for Civil and Administrative reform.

**SIMILAR DEVELOPMENTS IN RUSSIA?**

The transformation of administrative systems, which were a key instrument under the former communist regimes, into professional and reliable administrations ready to function in the complex of the EU system was an enormous task. The need for this transformation into professional and reliable administrations is not only a priority for the Central and Eastern European countries, but also for the Russian Federation. However for Russia the support for this transition is not given by PHARE, but by TACIS (Technical Assistance for Common Wealth of Independent States) based on the Partnership and Cooperation Agreement concluded between Russia, the EU and its Member States in Corfu in 1994.

After the expiry of that Agreement in 2007, this Agreement might be automatic renewed year by year provided that neither Party declares its denunciation. A Draft Agreement has been proposed in which for example it
will be mentioned that the Parties will progressively consolidate their relations in the framework of four common spaces: Common Economic Space, Common Space of Freedom, Security and Justice; Common Space of External Security and Common Space of Research and Education, including Cultural Aspects.

To function effectively with an intensified EU cooperation, Russia will need to adapt and modernize its general administrative capacities. Although Russia is not an EU Member State nor a candidate country, these new international developments concerning the enlarged EU as well as WTO accession, will have their impact on the administrative requirements in order to be able to participate effectively in the International system.

**EXPERIENCES WITH CIVIL SERVICE AND ADMINISTRATIVE REFORM IN CENTRAL AND EASTERN EUROPEAN COUNTRIES**

The three main areas of administrative development are the creation of new civil service systems (in particular the development and implementation of civil service legislation), the development of training capacities and the reform of administrative structures and procedures. These three areas in the development of professional and reliable administrations are essential requirements for states to function effectively and to have a more effective and accountable administration.

1) **Creating a professional and reliable civil service**

Civil service laws create the basic legal framework for the development of Human Resource Management in the central administration, which is a basic requirement for the development of a professional, stable and impartial administration.

In the early stage of the development of new systems of central administration in Central and Eastern Europe, the adoption of civil service legislation was generally considered the basic condition. Civil Service laws were considered the main reform tool for addressing problems as politicization, fragmentation and instability.

From 1992 to 2000 most of the candidate countries had adopted civil service laws.

Civil service Law in Hungary was adopted in 1992.

Civil service laws were adopted in Estonia, Latvia and Lithuania within a short time span in 1994-1995. In Latvia and Lithuania the adopted civil service laws were never fully implemented. They have been subject to an ongoing revision process, as the adopted laws were never fully implemented.

In Estonia the civil service law, adopted in 1995, entered into force in January 1996. Unlike the other two Baltic States, the Estonian civil service law has been implemented. In Bulgaria in 1999 a civil service law was adopted. Czech Republic, Romania, Slovenia and Slovakia have adopted civil service laws after 2000.

However the implementation of all the civil service laws was not always completed.

For example the development of a well-balanced recruitment and promotion system.

2) **Developing training systems**

Training can play an important role in bringing about administrative change
and should be considered to be a powerful administrative reform pool. It can further make a contribution to the development of a coherent administration.

Joint pre- or post entry training of new recruits can help creating a sense of community among new civil servants.

However the development of training systems has for a long time been ignored or neglected by the Central and Eastern European administrations.

A general problem with all the above mentioned training institutions is that very often they are little more than managers of training programmes. They do not have a core body of permanent trainers in their staff. Furthermore they lack the capacities to carry out reliable analyses of training needs. Training has been neglected as a reform tool because of financial constraints. The creation of government training schools requires a considerable investment. Further the approach to public administration reform has been mostly legalistic in nature, which is not surprisingly considering the prevailing legalistic tradition in many Central and Eastern European states. The adoption of legislation has been emphasized rather than the reform tools like training. We have seen in Russia identical experiences.

3) Administrative reform

Civil Service can only function adequately if it is embedded in well-designed administrative structures and processes. The re-definition of the role and position of ministries, their subordinated organizations and the core executive unit in the administration is a crucial aspect of any administrative development process.

The reform of policy-making and implementation structures and systems is one of the most difficult elements of the administrative development process in Central and Eastern Europe. The policy-making and implementation still showed many features of the previous systems: top heavy coordination, leaving little or no space for conflict resolution before issues reach the government, duplication of functions and especially a lack of clearly defined accountability structures.

Factors that contribute to failure of reform process are:

- administrative reform strategies are often designed in theory without sufficiently testing their feasibility or involving the main stakeholders in the design;
- the value of legislation as a reform tool has been generally overestimated. Adopting laws does not necessarily lead to changes in the operation of the administration;
- Administrative developments does not win votes, politicians therefore tend to lose interest, even if they subscribe in principle the need of creating efficient, professional and reliable administrations;
- The involvement of civil servants from the start of the process of changing the administrative culture is a highly underestimated element of reform programmes.

There are two factors that can contribute to the success of reform efforts:

- the economic situation and the real need for reform; efficient and effective administrations are necessary for budgetary reasons and to attract foreign investment;
external pressure to carry out administrative reform; the EU is the main organization; its membership requires the creation of a stable, professional and accountable administration.

EXPERIENCES WITH CIVIL SERVICE AND ADMINISTRATIVE REFORM IN RUSSIA

In Russia in 2003 and 2004 new civil service laws have been adopted. However the implementation of the Russian civil service laws is still under development and support of TACIS, DFID and World Bank projects.

The general objective of the Civil Service Reform (Administrative Reform II) Tacis project is to support comprehensive public administration reform in Russia and contribute to the creation of a merit-based professional, accountable and ethical civil service by assisting the Presidential Administration and other key stakeholders in improving civil service policy and management and developing programmes for the (re-) training of civil servants.

This general objective contains identical elements as the program of civil and administrative reform in Central and Eastern European countries.

Many reports have further been written about civil service and administrative reform in Russia (reports from OECD, World Bank and DFID).

The Russian Government has lastly drafted a concept for Administrative Reform in the Russian Federation in 2006 –2008. The objectives of this reform were summed up as follows:

• Improving the quality of government services and making them more accessible;
• Reducing the costs of government economic regulation to business;
• Raising the efficiency of the executive authorities

The following goals need to be reached for the accomplishment of the above-mentioned objectives:

• Introduction of the principles and mechanisms of results-based management in the executive authorities;
• Development and introduction of standards of government services provided by the executive authorities;
• Optimization of the functions of executive authorities and introduction of special regulation mechanisms in the spheres of work of executive authorities that are especially prone to corruption;
• More efficient collaboration between executive authorities and civil society, and also greater transparency and openness of the work of executive authorities;
• Modernization of the system of information support for executive authorities;
• Formation of appropriate organizational, information, resource and HR support for administrative reform

For the first stage of administrative reform implementation approximately 10 measures are proposed. However only one measure concerns training: development, testing and initiation of implementation of personnel training programs for the key areas of administrative reform.

Finally in this document the place of Russia in international ratings for the quality of governance is mentioned. Reference is made to GRICS (Governance Research Indicator Country Snapshot). In 2004 the rating covered 209 countries. The following
indicators are proposed for the evaluation of governance in Russia:

- Governance efficiency - this indicator reflects the quality of government services, the qualitative characteristics of government institutions, the competence of civil servants, the credibility of government policy;
- The quality of government regulation – this indicator is connected with the assessment of government regulation in the economy. It is used to measure such factors as government regulation of prices for goods and services, inadequate control in the financial sector, excessive regulation of business etc. The Russian Government in this Concept states that the administrative reform events should improve governance and government regulation.

In this context it is interesting to see that it has been proposed to use values close to those in East European countries as benchmarks for these indicators.

**FINAL REMARKS**

After comparison of the assessment and analysis of civil service and administrative reform in Central and Easter European countries and in Russia, we may conclude that these developments are more or less identical.

However for the Central and Eastern European countries explicitly EU Membership is mentioned as an incentive for reform, the accession criteria have even been enlarged with horizontal administrative capacities, whereas for Russia we could not find explicit references to incentives for reform. We assessed EU- Russia relations (Tacis), WTO, Worldbank, DFID as implicit incentives for reform. These incentives were not mentioned at all in Russian documents concerning reform, however we found one reference with regard to use for the indicators values. In the Russian Government document it was explicitly mentioned that they should be close to those in the East European countries.
THE LEGAL PERSONALITY OF THE EUROPEAN UNION - BETWEEN THE MAASTRICHT TREATY AND THE DRAFT TREATY ESTABLISHING A CONSTITUTION FOR EUROPE – REALITY AND PERSPECTIVES -

OCTAVIAN GABRIEL PASCU¹
CAIUS TUDOR LUMINOSU

Abstract. The scope of the present article is to present an overview of the prevailing and accepted opinion on the legal personality of the European Union. The starting point of the presentation is the analysis of the structural differences between the EU and the European Communities. Then followed by the institutional delimitation and the differentiation of these bodies within the European Construct with regard to actual European Law. After a brief presentation of the legal nature of the EU and its lack of legal personality and legal capacity, a scrutiny of the international law requirements to international law subjectivity of the EU is performed with the same result, but this time on international law level, denying the state character of the Union. This also represents the prevailing opinion in German literature, denying the existence of a legal personality of the EU on a public and international law level with respect to the actual European law. Further, we undertake an analysis on the international law effects of the lacking legal capacity of the Union. This is followed by a short exposition of the effects on European institutions of the awarding of legal personality to the EU. In the final part of the present article the focus is on the new European Constitution, still to be adopted by the member states, which expressly provides the fact that the Union is granted the legal personality and its implication on the present situation in the literature.

1. EUROPEAN INTEGRATION – A REALITY AFTER MAASTRICHT

Article 1 (3) of the Treaty on the European Union (TEU) stipulates that the basis of the European Union (EU) is represented by the European Communities. The beginning of the European Communities is marked by the formation of the European Coal and Steel Community (ECSC) on 23 July 1952, initiated by the French foreign minister Robert Schuman and his collaborator Jean Monet. This Treaty had been signed on 18 April 1951 by six European states. The next step is represented by the signing of the Treaty establishing the European Economic Community (Treaty of Rome) and the Treaty establishing the European Atomic Energy Community (Euratom Treaty) in Rome in 1957. The Merger Treaty led to the creation of a single Commission and Council for the

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three Communities. The moment these Communities started to enlarge by accepting new members signified the process of European integration proper: the adoption of a “financial constitution” of the European Economic Community (EEC) in 1969, the creation of the European Monetary System in 1978 and, last but not least, the institutionalisation of the summits of heads of state and government of Member States in 1974 marked by the creation of the European Council (officially called the European Council of Heads of State or Government).

The first step towards the European Union is represented by the signing by the members of the European Council of the Solemn Declaration on the European Union (Stuttgart, 1983), stipulating the examination and assessment of the possibilities of a treaty for the setting up of the European Union. But before such a structure could be created, the already existing European bodies had to be thoroughly reformed, and this was done by the Single European Act (SEA) which entered into force on 1 July 1987. The Act paved the way for a deeper and more regulated co-operation between the various Community bodies, for the consolidation of the internal market of the Communities, and to changes in the decision-making process at Community level and of the legislative process.

Signing the Treaty on establishing the European Union at the Maastricht European Council in 1991 represented the decisive step in achieving a deeper co-operation at European level. Despite various divergent opinions between signatories, the most notable being Great Britain’s refusal to accept the provisions regarding the social union (a situation remedied only after internal political changes in this country), a compromise was reached under the mediation of the President of the European Commission, Jacques Delors, at the Amsterdam European Council in 1997. The European structure after Maastricht has been marked by intergovernmental regulations, such as the Common Foreign and Security Policy (CFSP) and the co-operation in Justice and Home Affairs (JHA), as well as by changes in the EC, Euratom and ECSC Treaties. The European Economic Community was turned into the more comprehensive European Community (EC), and European Union citizenship was introduced, including the active and passive right to vote on local level, the right to vote for the European Parliament in the home country and the European right to file petitions (articles 17–22 EC Treaty).

As a consequence of the difficulties arising from the necessity – of constitutional law – of organising a referendum for the ratification of the TEU, signed in Maastricht on 7 February 1992, the Treaty entered into force only on 1 November 1993\(^2\).

Article N\(^3\) (2) of the Maastricht Treaty stipulates that an intergovernmental conference should be held in order to revise this document. This conference took place in Amsterdam, in June 1997, and the new TEU entered into force on 1 May 1999,

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\(^2\) Observe the negative result of the referendum in Denmark and the contesting of the constitutionality of the ratification law of the TEU in Germany.

\(^3\) Currently Art. 48 TEU.
once the ratification procedures were concluded in all Member States\textsuperscript{4}.

After having entered into force on 1 February 2003, the Treaty of Nice stipulates the abrogation of the Protocol of the Amsterdam Treaty regarding Community bodies with a view to the extension of the EU, and brings some alterations to the constitutive treaties, alterations made necessary by the prospective enlargement of these structures.

The European Council of Laeken of December 2001 created the European Convention on the Future of Europe, under the leadership of the former French president Valérie Giscard d’Estaing who, according to the Laeken Declaration on the Future of the EU, was charged with preparing the Draft Treaty establishing a Constitution for Europe. This new document was meant to mark the development of the European Union and, at the same time, a reformatory act of the European structures aimed at simplifying the already existing constitutive treaties. It was also meant to facilitate a clear and transparent distribution of the competences of the European Union and the Member States and, last but not least to consolidate democratic values and transparency in Europe. The European Convention concluded its works once this project was drawn up. On 29 October 2004, the Heads of State or Government of the 25 Member States and the three candidate countries (at that time Bulgaria, Romania and Turkey) signed the Treaty establishing a Constitution for Europe which was unanimously adopted on 18 June of the same year. The Treaty can only enter into force when it has been ratified by each Member State in accordance with its own constitutional procedure. The French and Netherlands rejected the Constitution by referendum on 29 May and 1 June 2005. Under these circumstances a period of reflection is currently under way in all countries. However the process of ratification by the Member States has therefore not been abandoned.

On 23 July 2002, according to the provisions of article 97, the ECSC Treaty expired. A protocol annexed to the Treaty of Nice, regarding the financial consequences of the expiration of the ECSC Treaty, stipulates that the entire patrimony and all the obligations entailed by this treaty are transferred to the European Community. According to the protocol, the net value of this patrimony is destined for research in the field of the industrial use of coal and steel and, to this end, a Research Fund for Coal and Steel is to be set up. As the entire patrimony of the ECSC has been returned to the Member States once this community has ceased to exist, the decision has been made that the patrimony should be administered by the European Commission until the Treaty of Nice enters into force. As far as the non-patrimonial juridical effects are concerned, in all the agreements concluded by the ECSC, the ECSC has been replaced\textsuperscript{5} by the EC starting with

\textsuperscript{4} A referendum was necessary in Ireland and Denmark, while in France the ratification required an alteration of the Constitution.

\textsuperscript{5} See Decision of the Representatives of the Governments of the Member States 2002/596/EC, OJ 2002 L 194/35.
THE LEGAL PERSONALITY OF THE EUROPEAN UNION -BETWEEN THE MAASTRICHT TREATY AND THE DRAFT TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

24 July 2002, the EC bearing all the rights and obligations of the dissolved organisation.


The Maastricht Treaty on the creation of the European Union⁶ structurally alters the construction of the Community by intensifying the process of integration and by setting up the “three-pillar” structure based on the European Communities and the intergovernmental co-operation policies, the Common Foreign and Security Policy and the Justice and Home Affairs⁷. The ratification of the Maastricht Treaty triggered ample debates in German literature, both regarding the legal nature of the EU and the existence of a legal personality of the Union. The German Federal Constitutional Court qualified the Union as “a confederation of states”⁸, a notion that was widely accepted and which reflects the co-existence of the Communities and of intergovernmental policies within the Union. The Communities maintain their own individual status, having legal personality⁹ and forming the Community pillar of the Union. Institutionally, the Union is closer to the other two pillars, the CFSP and the JHA, whose existence and functioning entail principles and procedures different from those of the Communities. Thus, the principles of the direct applicability and of the supremacy of Community law represent procedures specific to the Community pillar, while the second and third pillar presuppose a joint intergovernmental co-operation between Member States based on the principles of international public law. This distinction, which is dogmatically essential, between the European Communities and the European Union represent the most important premises for defining the legal status of the Union.

a) Defining European Union law and Community law

Primary Community legislation is made up by the constitutive treaties of the European Communities, with all the protocols, annexes and their subsequent completions and alterations. A new category of primary legislation was created by adopting the Single European Act in 1987. This legislation altered the constitutive Treaties of the EC and, as a precursor¹⁰ to the Maastricht Treaty, the SEA envisioned an organism of intergovernmental decision aiming at European co-operation in foreign policy and established outside the already existing EC Treaties (article 30 SEA).

⁷ The Amsterdam Treaty altered the structure of the JHA pillar, by transferring the policies on the free movement of persons, covering visas, asylum, immigration and judicial co-operation in civil matters into the body of the EC Treaty, the first pillar (articles 61-69), the remaining subjects in the TEU being currently called “Police and Judicial Co-operation in Criminal Matters”; this alteration will be further considered when talking about the JHA pillar.
⁸ BverGE 89, p. 155.
⁹ Art. 281 EC Treaty.
¹⁰ Fechstein/Koenig, Die Europäische Union, p. 5.
As far as the effectiveness of Community law is concerned, this is a legal source that takes precedence over national law, its regulations having priority by virtue of the supra-national character of Community law order. On the other hand, the effects of intergovernmental law, represented by the norms of the CFSP and of the JHA, are the same with those of regular international public law treaties\(^\text{11}\). Community legal norms take direct effect in or on Member States without requiring national adoption. This direct applicability leads to the supra-national character of Community law order. Intergovernmental regulations in CFSP and JHA require, however, an act of national law in order to become effective in Member States, namely an act of transformation, adoption or carrying into effect. This principle has also been formulated in the Amsterdam Treaty – article 23 (2) TEU – which, despite the introduction of the majority principle in CFSP, in cases where “important reasons of internal policy” are invoked, stipulates the possibility of applying the unanimity rule. Thus, Member States mostly maintain their sovereignty in these fields that are very sensitive for each of them.

As far as the term supra-nationality is concerned, it should be noted that it is not used in a unitary way. An international organisation was characterised as being supra-national for the first time in the ECSC Treaty at the Paris Conference in 1950, when this term was introduced in article 9 of the respective Treaty. In a wide sense, this characterisation is used for any decision of an international organisation or legislative body which immediately creates obligations for the Member States. In a narrow sense, the term applies mainly to the decision-making procedures of the EC, in those situations when the Member States may carry certain obligations even without their own accord, as a consequence of a majority decision\(^\text{12}\). Politically, the term supra-nationality is used as a synonym for indicating a structured integration within a process\(^\text{13}\).

The Maastricht Treaty has, similarly to the SEA, a heterogeneous structure: on the one hand Union primary legislation is made up by regulations which alter the EC treaties (articles 8-10 TEU), and which have become part of Community primary legislation once the Maastricht Treaty entered into force. On the other hand, Union primary legislation is based on the intergovernmental legal sources of the CFSP and JHA (articles 11-42 TEU). These two fields, so different in nature, are comprised in the common regulations (articles 1-7) and the final dispositions (articles 46-53) of the TEU.

As for the relationship between Union primary legislation, as stipulated by the CFSP and JHA provisions, and Community primary legislation, represented by the EC Treaties, these two parts of the European primary legislation are not totally independent from each other. The TEU aims at creating a single institutional framework (article 3 (1) TEU) which would ensure the coherence and continuity of the

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\(^{11}\) Ibidem.

\(^{12}\) Schweitzer/Hummer, Europarecht, p. 275.

\(^{13}\) Oppermann, Europarecht, p. 275.
measures meant to achieve the goals of the Union, at the same time maintaining and developing the *acquis communautaire*. Despite this intention, stipulated in article 3 (1) TEU, one can notice that unlike the Communities, in the CFSP and JAH it is not the joint bodies that act as legal subjects, but the very Member States.

Unlike the EC Treaties, the TEU does not hold provisions referring to the capacity, in the fields of CFSP and JAH, of creating secondary legislation with direct applicability in the Member States based on a competence conferred by primary legislation. In other words, neither the TEU, nor secondary legislation acts passed on its basis, such as council decisions on joint actions (article 14 (1) TEU), have direct applicability for the citizens of the Union. Neither the CFSP, nor the JHA contain norms of Union legislation which take precedence over national law. We are only dealing with treaties of international public law which commit their signatories to a tighter intergovernmental co-operation. However, in contrast with the facts mentioned above, the draft EU Constitution stipulates in its very first article the consecration of the Union’s supra-national character, thus changing the current situation and placing the Union’s structure on a position equivalent to that of the EC at present.

**b) The relation between the law of the European Union and Community law**

On the one hand, the Amsterdam Treaty brought about major changes in the European structure, while on the other hand, article 47 of the same treaty stipulates that the treaties underlying the formation of the European Communities are not affected by changes other than those stipulated by titles II-IV TEU and by the final dispositions of the articles 46-53 TEU. As for these changes, they may be said to represent only dispositions meant to complete Community law in certain fields, without bringing about major changes.

Starting from the premise that EU law is a separate entity from EC law, it should be pointed out that between these two entities there are certain points of contact and, implicitly, the possibility of conflicts between their legal norms. At the same time, there is the problem of the relation between these two systems which, according to article 3 (1) TEU, form together a single institutional framework. The hypothesis of the “three-pillar” structure of the Union with a “roof” supported by three pillars – EC, CFSP and JHA – gives the impression of a relation of supra-ordination of Union law versus Community law. Still, the TEU is an ordinary treaty of international public law, which entails obligations only for the signatory states, not for the EC. Even a simple participation, as part of the TEU, would not lead to a subordination of Community law in the system of Union law, but would only lead to assuming certain obligations as effect of an international treaty. Potential collision problems between norms should be solved according to article 300 (5) and (6) EC Treaty, corroborated with article 48 TEU, by altering Community law. By integrating

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14 Pechstein/Koenig, Die Europäische Union, p. 68.
Union law into the EC, this would take precedence over secondary Community law norms. However, until the draft EU Constitution has been drawn up, the possibility of integrating these two legal entities and, implicitly, the two structures, has not yet been considered by their initiators.

c) Conclusions

When characterising the relationship between the Union and the Communities, namely the roof character of the former and the pillar character of the EC, in the “three-pillar” structure, it should be mentioned that the relationship itself has no special dogmatic importance. The reason for this is that neither the obligation of observing the principle of coherence (article 3 (1) TEU), nor other possible obligations resulting from provisions of the TEU, respectively from actions of Union bodies, require dogmatic sanctioning in order to be substantiated. Assuming these obligations of the EC can be explained by the modifying instruments of the EC Treaty. Only the effect of carrying out these obligations, namely including the Communities in vaster integrative structures, as well as observing the principle of coherence by assuming the obligation of mutual alignment of Community policies with the CFSP and the JHA, can be represented for exclusively illustrative purposes for the Union as being a comprehensive structure as compared to the EC. All the above indicates that one can not talk about a union character of the EC in the present European structure.

3. THE LEGAL NATURE OF THE EUROPEAN UNION

The character of subject of public international law has to be denied if the three conditions of the so-called theory of the three elements have not been met. These refer to the three components which have to be present obligatorily for a structure to be defined as a state and, consequently to have legal personality. The first element is represented by the people of that state, characterised by the fact that they live on the territory of the respective state on a regular basis and can be defined by the formal bond represented by citizenship. In the case of the European Union the requirement of citizenship is missing, despite the introduction of the “citizenship of the European Union” by the Maastricht Treaty. This union citizenship is very different from the citizenship of a state as far as its rights and obligations are concerned.

The second element is represented by the territory of the state, inside whose borders a state exerts its sovereignty. This element is absent from the European Union, referring only to the territory of the EU Member States in which the TEU takes effect. This fact results from the character of international public law of the TEU. Article 229 EC Treaty only refers to the

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15 ECJ, Case 181/73, Haegemann/Belgia, [1974], pp. 449, 460; on the matter of precedence, the Court classified the international treaties, in which the EC are part, as being situated between primary and secondary Community legislation.


17 Koenig/Haratsch, Europarecht, 2003, p. 29.
scope of the EC and not to a territory of the Union, respectively of the EC.

The last element, according to the above mentioned theory, is the actual exercising of sovereignty on that territory. Neither the TEU nor any other acts grant the Union the possibility of granting itself its own competences necessary for its functioning, in other words it can not self-mandate itself in this sense. This possibility is common to all states and is essential for exercising their sovereignty on their own territory. Article 6 (4) TEU stipulates that the Union has the necessary means to achieve its goals and implement its policies. As this norm could have been interpreted as a mandate for the Union to grant its own necessary competences, the so-called “Maastricht Decision”¹⁸ of the German Federal Constitutional Court, which refers to the constitutionality of the law of approving the Maastricht Treaty, states the contrary. In supporting this point of view, the German Court refers to the principle of conferral, stipulated by article 5 TEU and article 5 (1) EC Treaty. According to this principle, the Union may become active only if it has been specifically mandated in the respective treaties, which contradicts the possibility of self-mandating. In the same context, the German Court, which states that the EU lacks the quality of subject of international public law, maintains that the norm stipulated in article 6 (4) TEU does not contain the procedural disposition necessary for its applicability. One should also exclude any reference to articles 202 and 205 EC Treaty, involving the possibility of action through the European Council, because the applicability of these articles in the CFSP and JHA pillars of the Union has not been specifically stipulated in article 28 (1), respectively article 41 TEU. In conclusion, the German Federal Constitutional Court interprets article 6 (4) TEU only as a statement of the political-programmatic intent of the EU Member States to provide the Union with the necessary means to achieve its goals. The Court also maintains that another interpretation of the text of article 6 (4) TEU, such as one provided by European bodies, would lack the obligatory character as far as the German state is concerned¹⁹.

Influenced by this decision, the majority opinion in the German doctrine maintains that the EU is neither a subject of international public law nor an international organisation²⁰. The concept of a structured international organisation, consisting of several organisations with legal personality – in this case the EU and the EC – independent from the relations of subordination or co-ordination existing between these entities, is not tenable. In this context, the Union is characterised as “an international association without legal personality”²¹ the Member States, as they are called in article 4 (2) or in article 11 (2) TEU, being, in fact, signatories of a treaty and not members in the sense given by the EC.

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¹⁸ See footnote 7.
²⁰ Koenig/Haratsch, Europarecht, p. 45; Schweitzer/Hummer, Europarecht, p. 23; for a general presentation of the opinions of the German doctrine see Koenig/Haratsch, Europarecht, p. 45.
²¹ Koenig/Haratsch, Europarecht, p. 45.
4. THE LEGAL PERSONALITY OF THE EUROPEAN UNION: ANALYSIS AND CONTROVERSIES

From the very beginning it should be made clear that the TEU does not specifically stipulate the legal personality of the Union, as it exists in the EC Treaty with reference to the Community. In this sense, legal reference materials contain a number of concepts and controversies regarding the legal personality of the Union and, implicitly, the capacity of constituting a subject of international public law. According to the overwhelming majority of the formulated opinions, the Union does not have legal personality. This specification is necessary following the analysis of the fundamental institutions and principles stated both in Community law and in the practice of international organisations. The controversies found in literature refer to the qualification of the legal status of the Union in the practice of international public law starting from the quality of international organisation to the existence or inexistence of legal personality. International organisations can be subjects of international public law if they have the capacity of holding rights and obligations in their relations of international public law. This capacity was granted by the Member States through a specific provision in the founding act, which, as we have already noted above, does not apply to the EU.

a) Legal personality by “implied-power”

The practice of international public law, however, has other means of acquiring legal personality by international organisations. One such means refers to acquiring legal personality by the so-called “implied-power” effect. According to this theory, the existence of legal personality does not require any specific provision in the founding act, but only presupposes dispositions from which, by applying the interpretation principle of “implied-power”, results that the Member States had the intention to attribute legal personality to the respective international organisation. Thus, an international organisation has to have the rights and obligations entailed by carrying out its tasks. This is the way in which the International Court of Justice (ICJ), in the “Bernadotte” Report, established that the legal personality of the UN (United Nations) implicitly arises from the extremely comprehensive tasks and objectives stipulated in the UN Charter (e.g., the provisions about the necessity of concluding treaties of international public law). We will further analyse whether, based on the application of the “implied-power” principle in the TEU provisions susceptible of conferring the capacity of international public law subject, one can deduce the legal personality of the EU.

According to article 49 TEU, any European state can apply for accession

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22 Pechstein/Koenig, Die Europäische Union, pp. 28; the same opinion is shared by Schweitzer/Hummer, Europarecht, p. 23; Oppermann, Europarecht, p. 55; Herdegen, Europarecht, pp. 78.
23 Pechstein/Koenig, Die Europäische Union, p. 40.
to the EU. The applicant states become, after carrying out the accession procedures, members of the EU, without requiring a separate accession to the EC as the latter represents one of the fundamentals of the Union, namely the Community pillar. Paragraph 2 of article 49 stipulates that accession takes place by signing an accession treaty between the applicant state and the Member States of the Union (just as in the case of the accession of Austria, Finland and Sweden). Thus, accession treaties are concluded with the Member States of the EU and not with the Union itself, which points to the fact that we are dealing with the second pillar of the EU, namely the CFSP, where competences belong to the Member States and not to the Union. If accession treaties were concluded with the Union itself, the logical conclusion would be that the EU does have legal personality. This conclusion is also supported by the idea according to which the foreign representation of the Union is a matter of intergovernmental co-operation in which the state holding the presidency of the council can not conclude international public law treaties in the name of the other Member States. Pechstein/Koenig consider that both paragraph 1 of article 19 TEU and the intergovernmental character of the CFSP convey a partial foreign representation of the Member States on the state holding the presidency of the council. This partial representation is limited to expressing points of view common to the States of the Union, and it does not include concluding agreements that could generate legal effects, such as concluding international treaties. Consequently, the intergovernmental character underlines the inexistence of the Union’s legal personality.

b) The status of Community bodies

Tightly connected to the problem of the Union’s legal personality is the qualification of the EU bodies: does the Union have its own bodies or does it resort to the bodies of the Communities in order to carry out its activities? Article 5 TEU enumerates, on the one hand, five fundamental bodies of the Union (the Parliament, the Commission, the Council, the Court of Justice and the Court of Auditors), but it makes explicit reference to Community treaties. On the other hand, article 4 TEU assigns the co-ordinating political role to the European Council, which is formed of the heads of state or government, but also of the President of the Commission. The systematic interpretation of these two provisions reveals that the intention of the European lawmaker was to create a body proper to the EU that should complete the single institutional framework postulated in article 3 TEU. This form of the Council, institutionalised by the Maastricht Treaty, has been present in Community practice since 1975 in the form of the

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25 Streinz, Europarecht, p. 54.
27 Pechstein/Koenig, Die Europäische Union, p. 42.
28 The European Council is not identical with the European Communities Council stipulated in Art. 121 EC Treaty.
biannual summits of the heads of state or government together with the President of the Commission, and it points out its political-diplomatic character. The European Community Council is responsible for the legal transposition of the political decisions made by the European Council. Thus, the European Council is the only body proper of the Union. This is the only way to account for the relatively reduced role played by the other bodies – Parliament, Commission, Court of Justice and Court of Auditors – within the Union. If the Union had had its own executive bodies, it could have had legal personality, considering that the existence of its own bodies is essential for the qualification of the legal status of an international organisation. The Union, therefore, carries out its tasks by means of the specific bodies of the EC, which points to the lack of legal personality.

At this point we should make some considerations as to the language used by the mass media and in certain political circles. As we have mentioned before, Community law presupposes the distinction between the EC, characterised by supra-nationality, and the EU, as a field of co-operation between Member States at intergovernmental level. This distinction should also be considered as far as the use of legal terminology in Community law is concerned. It goes without saying that the terms used by the media have the role of simplifying legal Community jargon which greatly reflects the level of difficulty of Community structure. It is also true that legal analysis requires the correct use of the terms and notions of Community law. The lack of legal personality and of proper bodies reveals in this sense the terminological distinctions existing in the legal community order. Thus, when we speak about the Council, we keep in mind the difference between the European Council, as a body of the entire Union, and the European Community Council, as a body specific for the Community pillar of the Union. As for the term “EU Council” used by the Council in certain documents, Dörr points out, with good reason, that it contravenes to the provisions existing in the institutional treaties, where the name “European Communities Council” was established. This provision, already stipulated in the Merger Treaty in 1965, in articles 1 and 9, has not been abrogated by article 50 (1) TEU, but remained as an integral part of primary Community legislation. At the same time, the Commission, as a specific body of the EC, bears the name of European Commission or European Community Commission, and not the

29 Oppermann, Europarecht, p. 96; on the other hand, Koenig/Haratsch, p. 352, consider that as the activity of the European Council does not result in the Union acquiring legal capacity, the Council does not meet the necessary requirements to be qualified as a body specific for the Union, only having the role of intergovernmental conference at the level of international public law.
30 Wichard, in: Callies/Ruffert, Art. 5 TEU, p. 51.
31 Dörr, NJW 1995, p. 3163.
34 Dörr, NJW 1995, p. 3164.
35 The Resolution of the Commission of 17.11.1993, not published in the OJ.
EU Commission, as it is currently used by the media. The Court of Justice of the European Communities, as a Community judicial body, also comprises, starting with 1989, a Court of First Instance. The European Parliament does not pose problems in this sense, considering its consultative role.

The terminology used in the TEU often refers to the Union as an entity (article 6 (3), according to which the Union respects the national identity of the Member States or their fundamental rights in paragraph 2 of the same article). This is however a purely declarative statement as it does not infer the existence of the Union's legal personality.

Last but not least, the foreign policy of the Union is not the foreign policy of a proper subject of international public law, as it might result from article 18 (1) TEU, which confers the President of the Council the function of representation in the CFSP. This is only a partial representation on behalf of the state holding the Presidency of the Council for the other Member States36.

c) Legal personality acquired by subsequent practice according to article 31 (3) (b) of the Vienna Convention on the Law of Treaties

Public international law practice knows another way of acquiring legal personality by an international organisation that is by subsequent practice. This is a method which is recognised by and stipulated in the Vienna Convention on the Law of Treaties in article 31 (3) (b). This way of acquiring legal personality could be deduced from the activities of the Union in the field of international public law, mainly from its concluding international agreements. The following treaties might fall into this category: The European Union Treaty with Bosnia-Herzegovina and Croatia concerning the administration of Mostar37. A possible discrepancy with the lack of the Union’s legal personality, thus its incapacity of concluding international treaties in its own name (and implicitly in the name of the Member States), can be seen from the provision stipulating that the respective treaty is signed by the President of the Council in the name of the Union Member States, within the Union38. However, the former foreign minister of Germany, Klaus Kinkel, makes a rightful observation referring to this situation, namely, that from legal point of view, in the case of the above mentioned treaty it is not the Union that acts, but the Member States and the Community39. The signing of the Peace Treaty for Bosnia-Herzegovina on 14 December 1995 by the Presidency of the Council on behalf of the EU falls into this category too. This is again a certification of the Union’s participation in this treaty in its quality of special negotiator40 and not a signing of the treaty in the name of the Union. At the same time, the treaties signed by the Union with Yugoslavia41, respectively

36 Koenig/Haratsch, Europarecht, p. 352.
with Macedonia\textsuperscript{42}, concerning the setting up of a surveillance commission on behalf of the EU, treaties which explicitly stipulate the quality of participant of the Union\textsuperscript{43} reinforce this conclusion. Recognising the right of the Union to participate in the relations of international public law by concluding international agreements in the form of association, may represent an argument for acquiring partial legal personality for the Union by virtue of article 31 (3) (b) of the Vienna Convention on the Law of Treaties\textsuperscript{44}. This argument could be effectively invoked if the Member States hadn’t explicitly opposed it by rejecting the proposals of Ireland\textsuperscript{45} and the Netherlands\textsuperscript{46} to grant the Union constitutive legal personality during the negotiations that led to the conclusion of the Amsterdam Treaty. Being a fundamental provision of Community structure based on primary Community legislation, granting legal personality should have been the object of the procedure of altering the constitutive treaties, according to article 48 TEU\textsuperscript{47}. Paragraph 3 of the same article stipulates that in such a case decisions are adopted according to the rule of unanimity which, obviously, didn’t happen in the present situation.

\textbf{d) The absorption of the Communities in the Union}

In German literature, v. Bogdandy/Nettesheim’s\textsuperscript{48} melting theory, which starts from the idea of the unity of Community legal order, kicked off an ample debate. According to the opinion of the two authors, the Union is a unitary structure which also comprises the Communities and which adequately reveals the gradual intensifying of the European integration process. The fundamental legal ground of the melting concept is article 3 (1) TEU, which stipulates the single institutional framework of the EU. Thus, from the point of view of its organisation, of the legal consequences and of the legal system, the Union would represent a unity, which is the constitutive basis of the Community legal nucleus\textsuperscript{49}. Starting with the Maastricht Treaty, Community development enters a new phase, allowing the authors to state that the Union represents a new structure which replaces the old one. In other words, the Union absorbs the Communities, whose substitute it becomes automatically, a statement that also results from the terminology used in drawing up Community legislation. From this point of view, the authors maintain that the terms “Community” and “Community law” would be obsolete and their use would not correspond to the present image of the European structure, more and more often referred to with the terms “Union” and “Union law”\textsuperscript{50}. The conclusion reached by v.

\textsuperscript{43} Schröder, in: Europäisches Verfassungsrecht, p. 391.
\textsuperscript{44} Dörn, EuR 1995, p. 343 defines this quality as legal personality “in statu nascendi”.
\textsuperscript{45} CONF 2500/96, 05.12.1996, p. 91.
\textsuperscript{46} CONF 2500/96, ADD. 1/20.3.1997, p. 47.
\textsuperscript{47} Peckstein/Koenig, Die Europäische Union, p. 38.
\textsuperscript{48} V. Bogdandy/Nettesheim, NJW 1995, p. 2324; by the same authors, EuR 1996, p. 3.
\textsuperscript{49} V. Bogdandy/Nettesheim, NJW 1995, p. 2327.
\textsuperscript{50} V. Bogdandy/Nettesheim, NJW 1995, p. 2327; in this sense, as the authors explain, the Regulations issued by the EU Council are called Regulation (EC) only insofar they refer to Community legislation and not to Union legislation.
Bogdandy/Nettesheim is that, from this perspective, the Union, as unitary organisation, meets all the objective conditions necessary to have legal personality, and it remains that this dogmatic concept be accepted in the practice of international public law\textsuperscript{51}.

Considering the recent developments and legislative projects at the level of Community legal order\textsuperscript{52}, the melting theory proposed by v. Bogdandy/Nettesheim has a visionary and innovative character. It represents a way of simplifying the complicated Community legal structures through proposals that are more accessible to the citizens. The melting concept however represents rather a social-political aspiration than a legal reality\textsuperscript{53}. From a normative point of view, the authors ignore the fact that the single institutional framework stipulated in article 3 (1) TEU only conveys a partial unity of the Community bodies, which does not directly lead to the immediate melting of the structures they represent. Politically, the proposals referring to the absorption of the Communities into the Union and to a possible granting of legal personality to the latter were explicitly rejected by the Member States.

Although there have been other opinions presented in the literature, insisting on a structural melting of the Communities within the Union\textsuperscript{54}, as well as on granting legal personality through the Amsterdam Treaty\textsuperscript{55} the majority of the authors stick to the thesis that the Union does not have legal personality, at least not until the European Constitution enters into force.

**e) The European Union – a subject of private law?**

Another aspect connected to the EU’s legal personality is the question whether the EU can be a subject of private law. This capacity offers the possibility of engaging relationships at the level of private law and of concluding legal documents, mainly legal contracts in the Member States. Unlike the EC Treaty (article 282) and the Euratom Treaty (article 185), the TEU does not contain explicit provisions in this field. Although for being a subject of private law, this is not necessary, a problem arises where we deal with an international organization which does not hold the capacity of a subject of public law. According to the majority opinion in the theory of international public law, the capacity of private law of an international organisation does not result from its capacity of international public law. Assigning the status of private law subject to an international organisation falls under the regulations of national legal norms, so that there is no mandatory determining connection between the two\textsuperscript{56}.

The absence of the EU’s private law capacity, such as it is the case of the German legal system\textsuperscript{57}, has no major legal consequences. As for the

\textsuperscript{51} V. Bogdandy/Nettesheim, NJW 1995, p. 2328.
\textsuperscript{52} We refer to Art. 6 of the Draft Treaty establishing a Constitution for Europe.
\textsuperscript{53} Certainly, if we ignore the draft EU Constitution.
\textsuperscript{55} Wichard, in: Callies/Ruffert, Art. 5 TEU, p. 51.
\textsuperscript{56} Koenig/Harratsch, Europarecht, p. 52.
\textsuperscript{57} In German international private law, the recognition of the private law capacity of a foreign legal personality depends on the latter’s statute in the country where it is based.
necessity of such a capacity for carrying out its activity, it should be mentioned that as far as the Union is concerned its headquarters are not located in any specific country, the private law capacity being irrelevant in this case. The other issue raised refers to the necessity of private law legal personality in the case of legal protection for the citizens of the Union. The Union is not mandated to issue acts whose recipients are the citizens of the Member States\(^5\), so that the existence of a private law capacity in this situation is again not necessary.

### 5. THE LEGAL PERSONALITY OF THE EUROPEAN UNION WITHIN THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

The Treaty for the future European Constitution explicitly stipulates in article I-7 the legal personality of the Union. This provision together with article IV-438 lays down that the Union established by the Constitutional Treaty is the legal successor to the European Community. According to the Final Report of Working Group III of the European Convention, which during its works discussed the problem of the Union’s legal personality, the present Community structure is liable to create confusion as far as the legal capacity of European institutions is concerned. Based on this consideration, the Working Group recommends the introduction in the Treaty of the Constitution of an explicit provision that should regulate the granting of legal personality to the Union\(^6\). We shall further analyse the dogmatic implications of this provision and its consequences on the relations of international public law of the EU.

- **a) The explicit recognition of the Union’s legal personality: implications on the “acquis communautaire”**

  Based on the mandate entrusted by the Presidium of the Convention, Working Group III analysed, in its debates, the effects of the explicit granting of legal personality to the Union, as well as the consequences born by the melting of the Union’s legal personality with that of the legal personality of the Communities would have on the Community legal order\(^7\). Considering the disappearance of the present form of Community Treaties and the drawing up of a single constitutional document that replaces them, we think that it is not that much a melting, as it is formulated in the Report\(^8\), but an absorption of the Communities into the Union\(^9\), idea which is also reflected in the taking over of the Community legal institutions in the new legal structure, under the name of Constitution\(^10\). Thus, we can

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\(^5\) BverfGE 89, pp. 155, 175; The German Federal Constitutional Court, in its decision in the Maastricht case, retained that the TEU does not contain provisions which should represent a mandate for any actions of any nature on the possessors of basic rights, namely on the citizens of the Member States. This decision is based on the fact that there is no legal protection of the citizens’ individual rights against acts of Union law neither in the field of JHA nor in that of CFSP either by the ECJ or by the Court of First Instance (Art. 46 TEU).


\(^7\) See the text of the Final Report, pt. 1, p. 1.

\(^8\) See pt. 3 of the Final Report, p. 2.

\(^9\) See also pt. 2. d) of the article – the v. Bogdandy/Nettesheim theory.

\(^10\) See Art. I-1 of the Constitutional Treaty: “…this Constitution establishes the European Union...”. 
see that the Community pillar of the present European architecture passes on materially its institutions and organising principles (including its legal personality) to the future European Constitution. At the same time, the term “Union” reflects to a much greater extent the intensification of the process of integration and the joint European values that lie at the basis of drawing up a Constitution for Europe.

Following the explicit granting of a legal personality to the Union by article I-7 of the EU Constitution, the “Community acquis” undergoes essential alterations as far as its legal structure is concerned. The model of the “three-pillar” structure, established by the Maastricht Treaty disappears, the institutions comprised by these pillars being integrated into a unitary structure, under the form of a Constitution. At the same time, the constitutive treaties cease to be effective, but the institutions and organising principles remain valid, this time within a single text meant to simplify the European legal structure. The members of the Working Group, together with the experts and legal advisors heard during its works, reached the conclusion that a potential merger of the treaties would be the logical consequence of recognising the legal personality of the Union. This would essentially contribute to simplifying the European legal system, as the distinction between the Union and the Communities would become irrelevant, thus eliminating a number of procedural and decision-making difficulties, mainly in the two fields of intergovernmental co-operation, CFSP and JHA. It still remains to be seen to what extent the procedural particulars of these two fields will be considered, taking into account the fact that the Treaty stipulates their integration into the single constitutional text. A special problem is raised by the correlation of these two fields with the process of lawmaker, as the Treaty does not stipulate any specific methods of passing secondary legislation in the matters of intergovernmental co-operation, as it has been the case so far, which means that the range of applicability of the future legal acts proposed by the constitutional text also extends over the two former pillars of the Union, CFSP and JHA. It follows that, at least the co-operation in JHA raises the problem of the principle of direct applicability of the legal acts of the Union, if we consider that the European legal instruments stipulated in article I-33 of the Treaty are applicable in this field as well, and they do have this effect. This represents a novelty compared to the present Community acquis, in which the legislative acts specific for the JHA do not benefit

64 General guidelines, common strategies, joint actions, common positions in the CFSP – Art. 12 TEU; common positions, framework decisions, decisions and conventions for the JHA – Art. 34 TEU.

65 European laws, European framework laws, European regulations, European decisions, recommendations and opinions – Art. 32 (1) of the Treaty; European laws and European framework laws take over, in most part, the structure of the present regulations and directives, respectively, as legal acts of secondary Community legislation.

66 The CFSP is stipulated in part III, title V, chapter II of the Treaty, while co-operation in Justice and Home Affairs is regulated under a new name “Area of Freedom, Security and Justice”, part III, title III, chapter IV.

67 The Treaty stipulates, as far as the CFSP is concerned, European decisions which are legal acts without legislative character.

68 See footnote 63.
from direct applicability, which explains the reserve manifested by the Member States when talking about passing the competences at Union level in this very sensitive field of national sovereignty. In order to counterbalance this effect of direct applicability, Working Group X of the Convention, which discussed the regulations of the Project referring to co-operation in the field of JHA, recommended that the competences of the Court of Justice should be extended over the field of justice and home affairs, as these measures could immediately affect individual rights of the citizen.

b) The effects on international public law of recognising the legal personality of the Union

By explicitly granting legal personality through the EU Constitution, the Union becomes an international public law subject, a capacity currently recognised only to the European Community. Following the dissolution of the “three-pillar” structure that currently ensures the fundament of the European construction, the Union takes over the competences existing within the Community pillar, including the competences of the EC on international level, consequently the negotiation and conclusion of treaties of international public law. Working Group III of the Convention reached the conclusion that granting legal personality to the Union would not require the alteration of the distribution of competences on international level between the Union and the Member States, nor that of the procedures and competences of Community bodies, only an adaptation to the newly created structure, in the sense of correlating these provisions with those referring to the foreign policy of the Union69.

It has to be noted that the Union’s newly acquired quality of being a subject of international public law is not original but derived as it has been granted by its member states.70 Thus this quality of the Union is limited, as the EU can be a subject of only those international rights and obligations which are necessary for reaching its objectives and the fulfillment of its competences.71 Even though, according to recent German literature, the international legal personality of the new EU cannot be described as being limited.72 Proof of this can be seen when considering the competence to conclude international agreements provided by art. III-323 (1), as well as the exclusive competence rule of the Union of art. I-13 (2). The wording of these regulations as well as the records of the debates and negotiations held within the European Convention indicate that the Convention intended a widening of the external powers of the Union by referring to the ECJ’s AETR jurisprudence73 regarding the implicit capacity to conclude agreements.74

70 Von Heinegg, in: Vedder/von Heinegg, art. I-7, nr. 2; States, as opposed to international organizations, do possess an original quality of being a subject of international law, Hermann, in: Der Vertrag , p. 310.
73 ECJ, Case 22/70, Commission/Council, [1971], p. 263.
74 Streinz/Ohler/Hermann, Die neue Verfassung für Europa, p. 89.
The rule of international public law, that international legal personality also requires the formal recognition by other international legal persons e. g. by concluding agreements with non-member states and international organisations, should actually play a minor role in this situation. The new Union is the legal successor of the present EC,\textsuperscript{76} which already has legal personality and is widely recognised by states and international organisations.\textsuperscript{76} With a view to simplifying the foreign representation of the Union, as a consequence of its acquiring legal personality, the function of Union Minister for Foreign Affairs has been created\textsuperscript{77}. The Union Minister for Foreign Affairs is to ensure the coherent representation of the Union abroad by initiating political dialogues in international conferences and organisations. The representation of a foreign unitary common position is, however, limited in the situation in which the conclusion of an international treaty falls both in the competence of the Union and in that of Member States. Such a case requires the participation in negotiations and in concluding of the treaty both of the Union and of the Member States, which have to co-operate in such a tight manner as to be able to adopt a unitary common position\textsuperscript{78}, although Working Group III recommended, in this sense, establishing a single delegation representing the Union\textsuperscript{79}.

As a consequence of recognising its capacity of international public law subject, the Union acquires, besides its capacity of concluding international treaties, other similar rights which ensue from this quality: the right to file complaints in an international court, the right to become member of an international organisation or of an international convention (for example, the European Convention on Human Rights), and the right of its employees to benefit from privileges and immunity.

Once the Constitution for Europe will have entered into force, the legal personality of the Union will replace that of the EC, and the Union will subsequently take over all the obligations that the Community has taken on by virtue of the international relations it is part of.

ABBREVIATIONS

ADD. Addendum
AVR Archiv des Völkerrechts (law journal)
Bull. EU Bulletin of the European Union
BverfG Bundesverfassungsgericht (German Federal Constitutional Court)
BverfGE Entscheidungen des Bundesverfassungsgerichts (Decisions of the German Federal Constitutional Court)

\textsuperscript{75} See also art. IV-438 of the EU Constitution and Fassbender, AVR 2004, pp. 26.
\textsuperscript{76} Von Heinegg, in: Vedder/von Heinegg, art. I-7, nr. 3; see also Streinz/Ohler/Hermann, Die neue Verfassung für Europa, p. 33.
\textsuperscript{77} Art. III – 197 of the Treaty.
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RECENT ADVANCES IN TERRITORIAL COMPETITION AND COMPETITIVENESS ANALYSIS

DANIELA-LUMINIȚA CONSTANTIN*

Abstract. This paper addresses the question of territorial competitiveness – at national and regional level – from the perspective of the most important research undertaken in the international arena in order to build-up competitiveness indicators able to reveal the complexity and dynamics of this phenomenon in the contemporary society. A special emphasis is put on studies developed by prestigious organisations and research centres such as World Economic Forum, International Institute for Management Development, Cambridge Econometrics, ECORYS-NEI and so on.

1. INTRODUCTION

In the widest meaning, the economic literature defines territorial competition as the actions undertaken by the economic agents in a specific geographical area in order to ensure the increase in the living standard for the inhabitants of the respective territory. One of the supporters of this definition, Jaques Poot, uses the term of territorial competition so as to emphasize the fact that it takes place at different levels: city level, region level or state (national) level (Poot, 2000).

According to the view developed by Michel Porter, at national level the competitive advantages are understood as the conditions that a country offers to firms in order to make them prosper and grow. In this way, the respective country contributes to the reinforcement of its firms' competitive capacity on both local and global markets (Porter, 1996). The competitive advantages are neither static nor immune to the governmental policies, the same idea being applicable to regions as well. The governing authorities, at different levels, consider the territory they administrate as competing for access to the global market, to capital, to new knowledge and technologies and, sometimes, to human resources. In this respect, their actions, undertaken for strengthening the competitive position, influence the results at both national and regional level.

This view supports the notion of territorial competition as a notion of wide coverage, which does not restrict the participants only to the territorial administration category, but also refers to the behaviour of firms and households in the respective territory.

The territorial competition, defined this way, is in direct correspondence with the notion of territorial competitiveness (at regional and/or international level): the latter represents a measure of a territory's potential to achieve high, sustainable rates of living standard growth in the respective area.

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The regional competitiveness (RC), as such, has been more rarely and more poorly defined. According to Cambridge Econometrics (2003) the clearest, most concrete proposal comes from the European Commission, which refers to this term as follows:

“[Competitiveness is defined as] the ability to produce goods and services which meet the test of international markets, while at the same time high and sustainable levels of income levels or, more generally, the ability (of regions) to generate, while being exposed to external competition, relatively high income and employment levels”... “In other words, for a region to be competitive is important to ensure both the quantity and the quality of jobs” – The Sixth Periodic Report on the Regions (1999, p.4).

The GDP per capita is considered to be the best representation of this definition. It may be broken down in more factorial components, each having its own economic interpretation (Gardiner, 2003):

\[
\text{GDP} / \text{Total Population} = [\text{PIB} / \text{Total number of hours worked}] * [\text{Total number of hours worked} / \text{Employment}] * [\text{Employment} / \text{Working age population}] * [\text{Working age population} / \text{Total Population}]
\]

This formula describes the relation between GDP per capita on the one hand and the labour productivity, work – leisure ratio, employment rate and dependency rate on the other hand.

Actually, the decomposing is not done in totally independent components and some connections between the indicators can be noticed. For example, the regions with high productivity, that use highly skilled labour force, may also record high employment rates.

In general terms, the economic literature acknowledges two perspectives in RC approach (Camagni, 2002): RC as a combined measure of the competitiveness of firms in the region and RC as a competitiveness derived from the macroeconomic competitiveness.

However, none of these perspectives is totally acceptable: the first one because it focuses on firms' productivity and profit without taking into consideration the level of employment in the region, as an essential aspect for RC, while the second one does not consider that certain laws governing the economics of international trade do not work properly or do not exist at sub national level (for example: exchange rates variation, price – wage flexibility, etc.). Instead, other phenomena – such as the interregional mobility of production factors – capital, labour force – determine more important challenges to regions.

Therefore RC seems to be a concept “stuck in the middle” (Cambridge Econometrics, 2003) and the clarification of its determinant factors is necessary in order to define and understand it. This is possible by referring to points of view with explicit or implicit implications on the RC notion expressed by major economic schools as well as to the results of empirical research works concerned with the concrete RC analysis by means of specific methodologies for which the selection of indicators and data processing have an essential role.

* The regional implications of considering the total number of hours worked are more eloquent in this case than at national level. Regions may present a more important specialization from sectorial viewpoint (for example: agriculture), making the adjustment based on various characteristics of hours worked represent more accurately the real working effort involved in producing the output in comparison with the measured one.
2. TERRITORIAL COMPETITIVENESS INDICATORS. EMPIRIC RESEARCH REGARDING THE COMPETITIVENESS FACTORS AT NATIONAL LEVEL

Taking into account the influence of governmental policies upon the economic growth, the statistical dimension of competitiveness is often used as a scorecard of these policies. Therefore many international organizations and research institutes are concerned with measuring the competitiveness of national economies by means of a large set of indicators, countries being ranked on the basis of an index that represents a weighted average of the indices corresponding to the indicators employed. Most frequently the quantifications performed by the World Economic Forum (WEF) and the International Institute for Management Development of Geneva (IMD) are considered in this respect. Until 1996 the WEF and the IMD published a common index, afterwards the two organizations have modified their methodology independently and published separate reports on competitiveness.

Although it has been noticed that the measurement of competitiveness on the basis of a too great number of indicators is not as relevant as the one based on a set of fundamental, target-indicators, the two institutes use more than one hundred indicators, collected from official statistics and surveys done with business people in over 50 countries. Both methodologies use regression functions for analysing the determinant factors of the economic development. The World Economic Forum publishes the index known as Growth Competitiveness Index (GCI) whose construction is based on three pillars considered as being fundamental for the economic development, namely the technology level of the countries analysed, the state of their public institutions, and the quality of macroeconomic environment. Each of them is taken into consideration within the GCI by means of a specific index.

In the latest GCI reports the WEF experts have emphasised that the role of new technologies in the economic growth process is different among countries, depending upon their general development level and that the technology innovation is relatively more important for the economic growth in the countries close to the so-called “technology frontier”. For example, the 2004 GCI Report mentions that the technology innovation is crucial for the economic growth in a country like Sweden, while the technology transfer (often associated with foreign direct investments) is relatively more important in countries like the Czech Republic (www.weforum.org).

For this reason, in order to establish the GCI the countries under study are separated into two groups: the first one comprises the economies for which the technologic innovation is a fundamental factor of the economic growth (core innovators); the second one includes the economies which rely on the transfer of technologies from abroad (non-core innovators).

The basic importance of technology innovation for the countries belonging to the first group is taken into consideration by allowing a greater importance (weight) coefficient (than in the case of the countries in the second group) to the innovation sub index within the technology index. For the computation of the technology index in the case of the second group of
countries a specific sub index is employed, namely the technology transfer sub index. Finally, considering that the determinants of the economic competitiveness are different for the two groups of countries, the weight placed on the three partial indices is also different. Thus, for the non-core innovators the weight is higher for public institutions index and macroeconomic environment index. This does not mean that the two aspects do not have a great importance for the core innovators as well, but in their case it is considered that they have been for a long time in a period characterised by institutional stability, the need for technology innovation being relatively more important to the economic growth process.

Details about the composition of the GCI are presented in Box 1.

**Box 1**

**The Method of Composition of Growth Competitiveness Index**

- The responses to the survey questions are ranked on a scale from 1 to 7.
- The values of the data variables collected from official statistics are converted to the same 1-to-7 scale by means of a linear interpolation formula:

\[ 6 \cdot \frac{[x_i - x_{\text{min}}]}{[x_{\text{max}} - x_{\text{min}}]} + 1 \]

where:
- \( x_i \) = value of the indicator for the country analysed
- \( x_{\text{max}} \) = maximum value of the indicator (for the country with the best result)
- \( x_{\text{min}} \) = minimum value of the indicator (for the country with the worst result)

GCI (I) = 1/2 TI + 1/4 PII + 1/4 MEI
GCI (II) = 1/3 TI + 1/3 PII + 1/3 MEI

where:
- GCI = Growth Competitiveness Index for countries in the first group (core innovators, I) and second group (non-core innovators, II)
- TI = technology index
- PII = public institutions index
- MEI = macroeconomic environment index

Each of the three indexes cumulates, with different weights in the case of each group, a series of specific sub indexes. For example, TI (I) = \( \frac{1}{2} \) innovation subindex + \( \frac{1}{2} \) ICT subindex (Information and Communication Technology), while TI (II) = 1/8 innovation subindex + 3/8 technology transfer subindex + \( \frac{1}{2} \) ICT subindex

The same method is employed for further composing of the subindices (see www.weforum.org)
The score of competitiveness (presented in World Competitiveness Scoreboard (WCS)) computed by the International Institute for Management Development (IMD) in Geneva takes into account four determinant factors: economic performance, government efficiency, business efficiency, and infrastructure. Each of them is divided into five sub factors which emphasise the fundamental aspects of the domain under analysis, as follows:

Economic performance: domestic economy, international trade, international investment, employment, prices.


Business efficiency: productivity, labour market, finance, management practices, attitudes and values.

Infrastructure: basic infrastructure, technological infrastructure, scientific infrastructure, health and environment, education.

In total, the 20 sub factors consider over 300 criteria; however, these are not equally distributed by sub factor. For example, in order to evaluate education more criteria are used in comparison with prices. Regardless the number of criteria employed, each sub factor has the same weight, of 5% (a total of 20 * 5% = 100%).

On the whole, the criteria for which WCS elaboration is based on official statistics represent approximately two thirds whereas one third counts for the information obtained by means of surveys.

Starting with the year 2004 the IMD Report comprises two absolutely new elements, as follows (www02.imd.ch/wcc/ranking):

- in addition to one global ranking (referring to all 60 countries examined), there are several customized rankings split by population size, by wealth or by region (Europe – Middle East – Africa, Asia – Pacific, and the Americas);
- regional economies have been also included since 2004 for they play a particular role in the economic development at global level and show “pockets” of competitiveness with different profiles in comparison with the countries they belong to (for example Bavaria – Germany, Catalonia – Spain, Ile de France – France, Lombardia – Italy, Maharashtra – India, Rhone-Alps – France, Scotland – United Kingdom, state of Sao Paolo – Brasil, Zhejiang – China).

At the same time other reports on the competitiveness of national economies are elaborated, i.e., by the Organization for Economic Cooperation and Development (OECD)³ and by the UK’s Department for Trade and Industry⁴.

A synthesis of the competitiveness factors at national level analysed by the most important reports developed in the international arena is presented in A Study on the Factors of Regional Competitiveness. A final report for The

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* OECD’s New Economy Report (2001) takes into account 5 groups of factors considered as having a strong causality relation with the economic competitiveness and which give a major importance to the new economy: ICT usage, innovation and technology diffusion, human capital, entrepreneurship and quality of macroeconomic environment.

** Published since 1999, the Competitiveness Indicators Report uses the benchmarking in order to evaluate the UK’s performance against the world’s leading economies as compared to its main competitors from the perspective of five drivers of productivity: investments, innovation, skills, enterprise and competitive markets.
European Commission Directorate-General Regional Policy (2003), elaborated by Cambridge Econometrics, the University of Cambridge and ECORYS-NEI – Rotterdam. The respective synthesis presents the factors of competitiveness as being divided into three large categories, namely (page 2-23):

**Infrastructure and Accessibility**
- Basic infrastructure
  - road
  - rail
  - air
- Technologic infrastructure
  - ICT
  - telecommunications
  - Internet

**Human resources**
- Labour force characteristics
  - productivity
  - flexibility
- Management skills
  - internationalised
  - level of professionalism
  - efficiency level
- Highly skilled work force
  - scientists and engineers
  - symbolic analysts
- High participation rates in post school education
  - tertiary education
  - vocational education
- Educational infrastructure

**Productive environment**
- Entrepreneurial culture
  - low barriers to entry
  - risk taking culture
- Internationalisation
  - exports/ global sales
  - investment
  - business culture

- Technology
  - application
  - management
- Innovation
  - patents
  - R&D levels
  - research institutes and universities
  - linkages between companies and research
- Capital availability
- Nature of competition
- Sectoral balance

**3. DETERMINANT FACTORS OF REGIONAL COMPETITIVENESS**

As concerns the regional competitiveness (RC) analysis, two categories of studies can be distinguished: the first category approaches RC as a cumulative result of more determinant factors, while the second one focuses on a particular driver of competitiveness (Cambridge Econometrics, 2003).

Internationally, the most relevant studies for the cumulative approach have been undertaken by the European Commission (Second (2001) and Third (2003) Report on Economic and Social Cohesion), the Welsh Development Agency in partnership with Barclays Bank PLC (Competing with the World, 2002), UK’s Department of Trade and Industry (Regional Competitiveness Indicators (2002)), UK Government Offices in the East and West Midlands (commissioned to Ernst and Young Ltd) (East and West Midlands Benchmark, 1997), Silicon Valley Network (Silicon Valley Comparative Analysis, www.stanford.edu), and, the most comprehensive, Cambridge Econometrics in collaboration with Cambridge University and ECORYS-NEI Rotterdam (A Study on the Factors of Regional Competitiveness, 2003). In this
paper the most relevant aspects for the topic envisaged have been selected and presented below, in accordance with Cambridge Econometrics conclusions.

In the context of the Second and Third Report on Economic and Social Cohesion, even though the European Commission does not weight the factors of RC, it contributes to highlighting the factors which have the greatest influence in this respect. Starting from the idea that regions are at different stages of development and display differing economic-social structures, the reports point out the relevance of RC factors to various groups of regions. Accordingly, the factors of the greatest influence on RC are:
- employment and productivity level;
- sectoral structure of employment;
- demographic trends*;
- investments;
- investment in knowledge economy assets;
- infrastructure endowment;
- level and nature of education;
- innovation and R&D.

The Third Report reveals that interregional disparities with regard to competitiveness factors diminished at its elaboration date, but also draws the attention to the challenges generated by EU enlargement, especially after Romania and Bulgaria will join the EU.

Of a special interest is the study elaborated by Ernst and Young Ltd for the UK Government Offices in East and West Midlands, which had requested the application of benchmarking in order to determine the level of competitiveness of East and West

Midlands, as compared with other 12 EU regions. The purpose has been to identify measures for increasing the level of competitiveness for the region analysed. The study combines the statistical benchmarking with an assessment of best practices development in order to explain the differences in performance.

In the end, fifty five RC indicators resulted and were scored in accordance with their relative importance. The report concludes that for the regions included in the study competitiveness mostly depends on:
- knowledge-intensive skills;
- innovation capacity;
- investment level;
- the degree of employment concentration in high value added industrial activities;
- quality of financial and business services*;
- the level of foreign direct investment.

Within the studies which are concentrated on one single RC aspect, the following factors are the ones that have enjoyed the greatest attention:
- clusters (Porter, 1990, 1998, 2001);
- demography, migrations (Glaeser and Sheifer, 1995);
- hard / soft factors of localization (Kowalski and Rottengatter, 1998);
- entrepreneurial environment and inter-firm networks (Ritsila, 1999);
- institutional capacity and government quality (Bradshaw and Blakely, 1999, Rondinelli, 2002);
- industrial structure (EC’s Sixth Periodic Report, 1999);

* it is emphasised the negative effect of outward migration and ageing of population.
* It is considered that this sector has a special importance, not only because at present is one of the domains of activity with the highest growth rate but also owing to its contribution to raising the competitiveness of other sectors.
– innovation / regional systems of innovation (Guerrero and Seró, 1997), Cooke, 2003);
– property, models in the field of foreign direct investments (Cantwell and Lamarrino, 2000).

The synthesis regarding RC realised in the study drawn up by Cambridge Econometrics – mentioned before – is based on many of the elements presented in the synthesis of competitiveness factors at national level, but also introduces a series of characteristic features that mainly consist in:

- adding the quality of the territory under analysis in terms of housing, natural surroundings, cultural amenities and safety to the “Infrastructure and accessibility” chapter;
- including the demographic trends besides the high skilled workforce in “Human Resources” chapter;
- in the “Productive Environment” chapter the newly introduced elements refer to sectoral concentrations (balance/dependency, employment concentration, aware of high value-added activities), specialisation and governance and institutional capacity.

Also, this study has elaborated a typology of regions based on the key-factors of competitiveness. Considering the position occupied in a rectangular coordinate system, where the population density is configured on the horizontal axis and GDP per capita on the vertical one, three major groups of regions have been identified, as follows:

Regions attractive for production activities (production sites) appear as regions with a lower to medium level of incomes. In these regions the economic efficiency derives, first of all, from the inexpensive inputs. Herein, the endowment with production factors stresses the availability of work force, land and capital. Their attractiveness does not consist very much in the localisation or urbanization economies as it resides in the absence of losses and negative effects of urbanization.

The determinants of competitiveness are concentrated in the area of the basic infrastructure and accessibility (low-price land, absence of demographic congestion, affordable housing and available human resources also at moderate costs). Such an endowment with factors attracts foreign direct investments based on vertical integration relations.

However, the development strategies specific to regions in this group, which are not characterized by demographic congestion, were also adopted by regions with a higher population density, but, as a result of a low economic dynamism they are not facing disadvantages of urbanisation.

Examples of regions in this group are: regions in Ireland, Central Scotland, South Wales, Northern England, North – Pas-de-Calais and, recently, some regions in West of Poland, Czech Republic, Hungary.

Regions as sources of increasing returns are the ones with high rates of economic growth, with average population density and a robust economic structure. That is why they are also called dynamic or vital regions. In these regions the activities are concentrated in a selected number of industries, characterised by an increased level of agglomeration economies, representing important wealth sources.

The localisation economies, industry-specific in nature, favour the
process of getting high, sustainable incomes. Determinant factors of competitiveness are labour skills, division of labour between firms, the effects derived from the market dimensions, the existence of specialised suppliers.

Within the European Union well-known examples are the following regions: Baden – Württemberg, Emilia – Romagna, Zuid- Oost – Brabant, Oost – Vlaanderen (Gent), Rhône – Alpes (Grenoble) and Toulouse.

The regions – promoters of knowledge – are those which display a higher population density and high and sustained GDP growth rates. Often they consist of large urban areas, getting closer to the archetype of cosmopolitan regions and specialised urban zones. At the same time, these areas benefit from the agglomeration economies, specific not only to certain industries but also cross-sectoral. Based on a diversified, vibrant city atmosphere and an elaborate offer of consumption goods and services, even though difficult to be quantified, the urbanisation economies have a great importance. As centres promoting knowledge and ICT, these city regions are open to international activities, offer the best career opportunities, attract skilled and talented workers, determine naturally a good correlation between labour demand and supply, are characterised by high quality of R&D, of entrepreneurial relations, new firm formation, registration of a great number of patents. This kind of regions – as one may very well notice the case of London and Paris – present also considerable disadvantages of urbanisation, such as the high level of wages, demographic congestion, high housing costs and high rates of crime.

However, these drawbacks are counterbalanced by the special quality of human resources, by the excellent access to international markets and information, to venture capital, to business services and by the cultural amenities.

Such a typology represents a useful tool for a better understanding of the mechanisms of regional competition and competitiveness.

Moreover, by means of a large data base, built-up for the NUTS2 level and of extremely elaborated statistical and econometric instruments, the research done by Cambridge Econometrics has succeeded to place at the disposal of the General Directorate for Regional Policy of the European Commission a highly valuable material for assessing RC and interregional disparities. It has contributed to the objective underlying of the economic and social cohesion policy, which has set convergence – competitiveness – cooperation as basic priorities of the 2007 – 2013 financial exercise.

4. CONCLUDING REMARKS

In its widest acceptance the territorial competition refers to the actions undertaken by the economic agents in a certain territory so as to ensure the raise of the living standard of inhabitants in the respective area. It takes place at different levels: city, region or state level.

The territorial competition, defined this way, is in direct correspondence with the notion of territorial competitiveness (at regional and/or international level): the latter represents a measure of a territory’s potential to achieve high, sustainable rates of living standard growth in the respective area.
Usually, the competitiveness of national economies is measured by means of a wide set of indicators, the countries being ranked on a complex index basis. The respective index represents a weighted average of the partial indices employed. The calculations performed by the World Economic Forum (WEF) and by the International Institute for Management Development (IMD) and resulted hierarchies are most frequently taken into consideration. Although it has been emphasized that the measurement of competitiveness on the basis of a too great number of indicators is not as relevant as the one based on a set of fundamental, target-indicators, the two institutes use more than one hundred indicators, collected from official statistics and surveys done with business people in over 50 countries.

As regards the analysis of regional competitiveness, two different categories of studies have been identified: the first one considers the RC as the cumulative result of more determinant factors, while the second category is focused on single driver of RC.

The typology of regions based on the key-factors of competitiveness has revealed three essential types: regions as production sites, regions – sources of increasing returns and regions – promoters of knowledge. Such a typology represents a useful tool for a better understanding of regional competition and competitiveness mechanisms.

On the whole, the research performed in the international arena aiming to quantify the territorial competitiveness has proven its usefulness in underlying the economic and social policy at national and regional level. A suggestive example in this respect is the European Union's economic and social cohesion policy, which will concentrate on convergence – competitiveness – cooperation in its next programming period.

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