



**Dialogue  
between peoples and cultures:  
actors in the dialogue**

**Dialogue  
des peuples et des cultures:  
les acteurs du dialogue**

Brussels, 24 and 25 May 2004  
Bruxelles, 24 et 25 mai 2004



European Commission  
Commission européenne

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European Commission  
Directorate-General for  
Education and Culture  
Jean Monnet project

Commission européenne  
Direction générale  
de l'éducation et de la culture  
Action Jean Monnet

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**DIALOGUE BETWEEN PEOPLES AND CULTURES: ACTORS IN THE DIALOGUE**

Brussels, 24 and 25 May 2004  
European Commission – Education and Culture Directorate-General/Jean Monnet project  
Charlemagne Building, Rooms S3 and S1

**Monday, 24 May 2004**

8.30 a.m. Registration of participants – Welcome breakfast

from 9.30 a.m. to 11.00 a.m., Room S3 **OFFICIAL OPENING SESSION**

9.30 a.m. Chairman:  
**Mr Nikolaus G. van der Pas**, Director-General, Education and Culture DG

**INTRODUCTORY ADDRESS:**  
9.50 a.m. **Mrs Viviane Reding**, Member of the European Commission  
10.10 a.m. **Mr José-Maria Gil-Robles**, Member of the European Parliament  
President of the European University Council for the Jean Monnet Project, Brussels

**OPENING SPEECH:**  
10.30 a.m. **Ms Mervat Tallawy**, ESCWA Executive Secretary at the level of Under-Secretary-General of the United Nations

from 11.00 a.m. to 1.00 p.m. **PARALLEL WORKSHOPS**

1. THE NETWORKS OF THE MEDITERRANEAN, Room S3  
(Euro-Mediterranean Foundation for Culture)

Chairperson: **Prof. Malek Chebel**, anthropologist, specialist on the Arab world and Islam, Paris  
Discussant: **Prof. Peter G. Xuereb**, University of Malta

2. THE CONTRIBUTION OF WOMEN AND CIVIL SOCIETY, Room S1  
(Women's role in the dialogue)

Chairperson: **Mrs Simone Susskind**, President of 'Actions in the Mediterranean'  
Discussant: **Prof. Teresa Freixes**, Universidad Autónoma de Barcelona

1.00 p.m. Lunch at the Charlemagne Building

from 2.30 p.m. to 4.30 p.m. **PARALLEL WORKSHOPS**

3. CITIZENSHIP AND SOCIAL CHANGE IN EUROPE, Room S1  
(Immigration and integration)

Chairperson: **Prof. Bichara Khader**, Director of the Research Centre on the Contemporary Arab World, Université catholique de Louvain  
Discussant: **Prof. Elspeth Guild**, University of Nijmegen

4. THE ROLE OF THE MEDIA IN THE DIALOGUE, Room S3  
(Impact of the media: cross-cultural perceptions)

Chairperson: **Mr Charles-Ferdinand Nothomb**, Minister of State,  
Secretary-General of the MEDEA Institute and Chairman of  
the Mediterranean Committee of the International European  
Movement

Discussant: **Prof. Joaquín Roy**, University of Miami

from 4.30 p.m. to 6.30 p.m. **PARALLEL WORKSHOPS**

5. THE EURO-MEDITERRANEAN DIALOGUE AND THE INTERNATIONAL  
CHALLENGES, Room S3  
(The dialogue in the international context)

Chairperson: **Mrs Catherine Lalumière**, Vice-President of the European  
Parliament

Discussant: **Prof. Chibli Mallat**, Saint-Joseph University, Beirut

6. YOUTH AND THE RELIGIOUS FACTOR, TOLERANCE AND LAICISM, Room S1  
(Alternatives to the ideology crisis)

Chairperson: **Prof. Predrag Matvejevic**, Universities of Zagreb,  
La Sorbonne and La Sapienza

Discussant: **Prof. Enrique Banús**, University of Navarra

8.00 p.m. Dinner

The *Ad Honorem* Jean Monnet Chair Award ceremony,  
presented by **Mr Gil-Robles** and **Mr Nikolaus G. van der Pas**  
Métropole Hotel, Brussels

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#### **Tuesday, 25 May 2004**

8.30 a.m. Welcome breakfast

from 9.00 a.m. to 1.00 p.m., Room S3 **OFFICIAL CLOSING SESSION**

9.00 a.m. **CONCLUSIONS BY THE WORKSHOP CHAIRS**,  
in the presence of **Mr Gil-Robles**  
Chairman: **Mr Nikolaus G. van der Pas**

#### **CLOSING SESSION SPEECHES**

12.00 p.m. Speech by **Mrs Fatema Mernissi**, writer

12.30 p.m. Speech by **Mr Romano Prodi**, President of the European Commission

1.00 p.m. Lunch at the Charlemagne Building

## DIALOGUE DES PEUPLES ET DES CULTURES: LES ACTEURS DU DIALOGUE

Bruxelles, les 24 et 25 mai 2004  
Commission européenne – DG Éducation et culture/action Jean Monnet  
Bâtiment Charlemagne, salles S3 et S1

### Lundi 24 mai 2004

8 h 30 Enregistrement des participants – Petit déjeuner d'accueil

### 9 h 30 - 11 h salle S3 SÉANCE SOLENNELLE D'OUVERTURE

9 h 30 Président:  
**M. Nikolaus G. van der Pas**, directeur général, DG Éducation et culture

#### DISCOURS D'INTRODUCTION

9 h 50 **M<sup>me</sup> Viviane Reding**, membre de la Commission européenne  
10 h 10 **M. José Maria Gil-Robles**, membre du Parlement européen,  
président du Conseil universitaire européen pour l'action Jean Monnet,  
Bruxelles

#### DISCOURS D'OUVERTURE

10 h 30 **M<sup>me</sup> Mervat Tallaw**, secrétaire exécutive de la Commission économique  
et sociale pour l'Asie occidentale (CESAO) (secrétaire générale adjointe de l'ONU)

### 11 h - 13 h ATELIERS PARALLÈLES

1. «LES RÉSEAUX DE LA MÉDITERRANÉE», salle S3  
(Fondation euro-méditerranéenne pour la culture)

Président: **Prof. Malek Chebel**, anthropologue, spécialiste du monde arabe  
et de l'islam, Paris

Modérateur: **Prof. Peter G. Xuereb**, université de Malte

2. «L'APPORT DE LA FEMME ET LA SOCIÉTÉ CIVILE», salle S1  
(Le rôle de la femme dans le dialogue)

Président: **M<sup>me</sup> Simone Susskind**, présidente d'«Actions in the Mediterranean»

Modérateur: **Prof. Teresa Freixes**, université autonome de Barcelone

13 h Déjeuner au bâtiment Charlemagne

### 14 h 30 - 16 h 30 ATELIERS PARALLÈLES

3. «LA CITOYENNETÉ ET LES CHANGEMENTS SOCIAUX EN EUROPE», salle S1  
(L'immigration et l'intégration)

Président: **Prof. Bichara Khader**, directeur du Centre d'études  
et de recherches sur le monde arabe contemporain,  
université catholique de Louvain

Modérateur: **Prof. Elspeth Guild**, université de Nijmegen

4. «LE RÔLE DES MÉDIAS DANS LE DIALOGUE», salle S3  
(L'impact des médias dans l'imaginaire croisé)

Président: **M. Charles-Ferdinand Nothomb**, ministre d'État,  
président de l'institut MEDEA et président du groupe  
«Méditerranée» du Mouvement européen international  
Modérateur: **Prof. Joaquín Roy**, université de Miami

#### 16 h 30 - 18 h 30 ATELIERS PARALLÈLES

5. «LA NÉCESSITÉ DU DIALOGUE EURO-MÉDITERRANÉEN ET LES ENJEUX  
INTERNATIONAUX», salle S3  
(Le dialogue dans le contexte international)

Président: **M<sup>me</sup> Catherine Lalumière**, vice-présidente du Parlement  
européen  
Modérateur: **Prof. Chibli Mallat**, université de Saint-Joseph, Beyrouth

6. LA JEUNESSE FACE AU FAIT RELIGIEUX, À LA TOLÉRANCE ET À LA LAÏCITÉ»,  
salle S1  
(Alternatives à la crise des idéologies)

Président: **Prof. Predrag Matvejevic**, universités de Zagreb,  
de la Sorbonne et de La Sapienza  
Modérateur: **Prof. Enrique Banús**, université de Navarre

20 h Dîner

Remise des chaires Jean Monnet *ad honorem*  
par **M. José-María Gil-Robles** et **M. Nikolaus G. van der Pas**  
Hôtel Métropole, Bruxelles

#### Mardi 25 mai 2004

8 h 30 Petit déjeuner d'accueil

#### 9 - 13 h salle S3 SÉANCE SOLENNELLE DE CLÔTURE

9-12 h **CONCLUSIONS PAR LES PRÉSIDENTS D'ATELIER**  
en présence de **M. José-María Gil-Robles**  
Modérateur: **M. Nikolaus G. van der Pas**

12-13 h **DISCOURS DE CLÔTURE**  
12 h **M<sup>me</sup> Fatema Mernissi**, écrivain, Maroc  
12 h 30 **M. Romano Prodi**, président de la Commission européenne

13 h Déjeuner au bâtiment Charlemagne





*M<sup>me</sup> Simone Susskind  
Prof. Predrag Matvejevic  
M. Charles-Ferdinand Nothomb  
M. José-Maria Gil-Robles  
M<sup>me</sup> Fatema Mernissi  
M. Nikolaus G. van der Pas  
M<sup>me</sup> Catherine Lalumière  
Prof. Chibli Mallat  
Prof. Bichara Khader*

*Mme Lalumière*





*Prof. Chebel*



*M<sup>me</sup> Mernissi*





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*M<sup>me</sup> Susskind  
&  
Prof. Matvejevic*



*M<sup>me</sup> Mernissi*



*M. Prodi  
&  
M. van der Pas*



*M. Prodi*



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*M<sup>me</sup> Mernissi  
Et  
M. Prodi*



*M. Nothomb,  
Prof. Khader  
M<sup>me</sup> Tallawy*



*M. Gil-Robles*





OPENING SESSION  
SÉANCE SOLENNELLE  
D'OUVERTURE

INTRODUCTORY ADDRESS  
DISCOURS D'INTRODUCTION  
*Ms Viviane Reding*

OPENING SPEECH  
DISCOURS D'OUVERTURE  
*Ms Mervat Tallawy,*

## **Introductory address Discours d'introduction**

### **Discours de M<sup>me</sup> Viviane Reding** Membre de la Commission européenne

Messieurs les Ambassadeurs,  
Chers Professeurs,  
Mesdames et Messieurs,

Je suis heureuse de voir aujourd'hui rassemblées à Bruxelles un aussi grand nombre de personnalités – décideurs politiques, représentants de la société civile, éminents membres du monde académique, étudiants – pour faire le point et donner une nouvelle impulsion au dialogue des peuples et des cultures. Cette assemblée est remarquable par la participation d'un large éventail de cultures, d'opinions politiques et de sensibilités religieuses.

Je veux rendre ici hommage au travail de José María Gil-Robles, président du Conseil universitaire européen pour l'action Jean Monnet, et à mes services de la direction générale de l'éducation et de la culture, sous la direction de Nikolaus G. van der Pas, pour avoir rendu possible cette conférence. Comme vous le savez, l'action Jean Monnet organise régulièrement, depuis mars 2002, ce type de rencontres, qui, je l'espère, contribuent à faire avancer la réflexion conceptuelle sur le dialogue interculturel.

Aujourd'hui, nous nous retrouvons dans un contexte politique difficile, et l'urgence du dialogue apparaît chaque jour plus évidente. Le blocage de la situation entre l'État d'Israël et l'Autorité palestinienne avec l'extrême violence à laquelle nous assistons de part et d'autre, les tensions ethniques récentes au sud-est de l'Europe, les attentats de Madrid et de Casablanca, l'absence à terme prévisible d'une vraie stabilité pour l'Iraq et ses voisins: tous ces faits nous obligent à travailler vite et bien pour identifier quelles pistes concrètes d'action peuvent non seulement renforcer la compréhension entre les peuples de l'Union et des pays de la Méditerranée, mais aussi améliorer la vie des hommes et des femmes des deux rives de la Méditerranée.

#### **Cultures et valeurs**

Les Européens considèrent, et ils ont raison, que la diversité culturelle est un atout pour l'Union européenne, que nos différences de langues, de références culturelles, de modes de vie ne posent pas problème pour la poursuite de la construction européenne dès lors qu'existent une curiosité et des possibilités de connaître la culture des voisins et que se dégage peu à peu un socle de références communes. Dans le dialogue entre l'Europe et le sud de la Méditerranée, je crois sage de suivre la même voie: constater nos différences et établir ou retrouver des références communes.

Je considère comme vain de nier les différences et je vois trop encore les politiques ici et là s'en tenir à un discours consensuel sur la grande amitié euro-méditerranéenne et sur notre grand passé commun. Je crois que nous ne ferons progresser le dialogue qu'en reconnaissant que beaucoup de choses nous séparent, qu'en pratiquant le langage de la vérité. Nous devons pouvoir nous dire, comme entre vieux amis, ce qui ne va pas de part et d'autre. Dire, par exemple, que certaines interprétations du Coran aboutissant à avilir la femme dans la famille et dans la société ne sont pas acceptables pour l'Europe, pas plus que ne le sont les atteintes aux droits de l'homme et à la liberté d'expression. Nos amis du Sud doivent pouvoir dire que l'Europe leur semble trop une forteresse peu accessible aux hommes et aux femmes, aux produits et aux services du Sud. Notre dialogue sera d'autant plus fructueux qu'il sera franc, sans tabou!

Constat nos différences ne veut pas dire accepter toutes nos différences. Je crois qu'existe un socle incontournable de valeurs communes à l'humanité et que ces valeurs sont d'autant mieux respectées que tous les participants au dialogue vivent en démocratie. Le dialogue interculturel que nous voulons renforcer vise donc autant à faire progresser la démocratie qu'à diminuer et à prévenir les tensions entre Nord et Sud par une meilleure connaissance de l'autre.

Le travail à accomplir est considérable! La Commission que préside Romano Prodi en a fait une priorité. La volonté de la Commission européenne est en effet de construire un partenariat global et substantiel avec les pays du bassin méditerranéen, allant bien au-delà des seules considérations sécuritaires, comme a été perçue l'initiative de Grand Moyen-Orient. Nous estimons que, pour l'instant, et même si le processus de Barcelone a permis certains progrès – accords d'association, MEDA, assemblée parlementaire, accord d'Agadir sur le commerce, etc. –, notre partenariat n'a pas atteint le niveau souhaitable et que son renforcement va trop lentement. Cela est, à notre avis, la responsabilité non seulement de l'Union, mais aussi de ses partenaires du sud de la Méditerranée, qui doivent poursuivre leurs efforts, notamment pour créer les conditions d'un dialogue politique renforcé.

En outre, un dialogue et une coopération Sud-Sud renforcés ne pourront qu'accélérer le dialogue des peuples et des cultures entre Nord et Sud, en créant un dynamisme, une habitude de l'échange, mais aussi en équilibrant le poids politique des acteurs gouvernementaux du dialogue. Je regrette que ce dialogue et cette coopération Sud-Sud ne semblent pas décoller. Je pense que l'Union européenne doit favoriser ce dialogue Sud-Sud comme je le fais dans le domaine culturel avec, par exemple, l'initiative «Africa Cinemas» (distribution de films africains dans d'autres pays du Sud).

### **Les acteurs du dialogue**

Dans un monde de conflits, de plus en plus de citoyens se mobilisent autour du dialogue. Nous le savons, ce dialogue nécessite d'aller au-delà de relations interculturelles au niveau des pouvoirs publics afin de mobiliser les forces dynamiques de la société, qui sont susceptibles de bâtir des ponts entre cultures et de dégager des valeurs communes. Je veux d'ailleurs rendre hommage au rôle clé joué par la société civile dans le renforcement de la démocratie et des droits de l'homme.

Des instruments comme le satellite et l'internet peuvent fortement contribuer au travail des acteurs du dialogue. Ils peuvent aussi servir à propager la haine et à encourager à la violence, d'où mon appel répété auprès des gouvernements pour donner à l'éducation à un usage critique de ces médias un poids accru dans les programmes scolaires. Il me semble aussi que ce travail de connaissance des cultures entre Nord et Sud devrait faire partie des obligations de service public définies par les États pour leurs télévisions publiques.

Parmi les acteurs du dialogue, la jeunesse a un rôle clé. Au Sud, elle n'a pas connu le siècle dernier et le temps du colonialisme. Partout, elle est prête à se mobiliser pour ces causes justes, pour un monde meilleur. C'est la raison pour laquelle je suis fière d'avoir obtenu un renforcement des moyens consacrés à «EURO-MED Jeunesse».

Je suis convaincue qu'il faut multiplier l'offre d'échanges «*people to people*», offrir une troisième voie face à l'alternative entre une approche strictement multiculturelle, où chacun reste dans sa communauté et où les uns vivent en parallèle des autres, et une approche monoculturelle mondialisée, avec une culture dominante qui ignore souvent l'existence des minorités. Or, dans le monde d'aujourd'hui, les minorités s'expriment avec force, nous faisant comprendre que toute société viable à l'avenir ne pourra se construire qu'en reconnaissant la complexité de tout groupe humain et en adoptant un parti pris en faveur du dialogue.

La mondialisation, liée au développement économique et aux nouvelles technologies de l'information et de la communication, doit être mise à profit pour aller vers un dialogue permanent et égalitaire, entre les différentes cultures et religions. Dans ce processus, deux types d'acteurs peuvent s'épauler: la société civile et les pouvoirs publics.

### **Que faire maintenant?**

L'Union européenne mène déjà une ambitieuse politique en matière de dialogue interculturel, que nous comptons renforcer notamment en matière d'échanges universitaires avec Erasmus Mundus et le futur Tempus+ et de dialogue entre les collectivités locales. La «politique européenne de voisinage» est un instrument intéressant à cet égard, avec des plans d'action renforçant le dialogue politique, mais aussi permettant aux pays du sud de la Méditerranée un meilleur accès aux programmes communautaires et une vraie coopération dans l'ensemble des politiques communautaires, notamment celle du marché intérieur, ainsi qu'un financement accru combinant des interventions des Fonds structurels et de MEDA.

Je souhaite que le dialogue interculturel aboutisse à plus d'échanges d'étudiants et d'enseignants, plus d'initiatives communes de jeunes, plus de distribution des films du Sud au Nord, qui est catastrophique pour l'instant.

### **Vos travaux**

L'action de l'Union en faveur du dialogue interculturel, présente dans un grand nombre d'instruments communautaires, s'est vue renforcée, notamment en ce qui concerne le dialogue avec les pays du bassin méditerranéen, par la création de la Fondation euro-méditerranéenne Anna Lindh pour le dialogue entre les cultures. La Fondation, qui aura son siège à la bibliothèque d'Alexandrie, est appelée à devenir un forum de débat entre toutes les parties concernées. La première séance d'aujourd'hui, «Les réseaux de la Méditerranée», abordera sans doute la mission de cette fondation. Permettez-moi de dire à ce propos que j'espère que la Fondation ne sera pas l'otage des conflits régionaux et que ses conditions de fonctionnement en feront un instrument exemplaire au service de progrès politiques.

La séance sur l'apport des femmes à la société civile reprend le postulat de la déclaration de Barcelone, qui reconnaît leur rôle essentiel dans la vie économique et sociale des sociétés du pourtour de la Méditerranée. Mais nous le savons, ce rôle devrait encore s'accroître. Ses conclusions auront une importance particulière dans le cadre de la conférence.

Parmi les sujets de désaccord, l'immigration figure en bonne place. La séance sur la citoyenneté traitera de ce sujet complexe où il est reproché à l'Europe de nier l'apport de l'immigration du Sud dans le contexte général du vieillissement de la population en Europe.

L'Europe se veut une unité plurielle face à la mondialisation. La séance sur le contexte international du dialogue nous permettra de cerner au mieux la question des équilibres dans le dialogue entre les différentes régions du monde.

Le dialogue passe aussi, comme je l'ai évoqué, par la vision de l'autre donnée par les médias, qui sont aussi des acteurs du dialogue. La jeunesse a là aussi un rôle crucial à jouer, et la séance qui lui est consacrée permettra d'analyser comment les jeunes se positionnent par rapport au fait religieux, à la tolérance et à la laïcité.

## Conclusions

L'Europe est depuis peu réunifiée. En effet, depuis le 1<sup>er</sup> mai, nous vivons le plus important élargissement de l'histoire de l'Union. Je sais que des craintes ont été exprimées concernant un éventuel impact négatif de ce phénomène auprès des pays de la rive sud de la Méditerranée et de leurs populations. Peut-être un renforcement de l'intolérance à leur égard ou même une plus grande distance politique. Laissez-moi affirmer que ces craintes sont infondées.

Lors de la journée inaugurale du forum des cultures à Barcelone, il y a deux semaines, le maire de la ville a souligné que le XXI<sup>e</sup> siècle sera celui du dialogue, car – je cite – «sans dialogue il n'y aura probablement pas un XXII<sup>e</sup> siècle». J'attends de vous des idées et un état d'esprit, celui des grands intellectuels juifs, chrétiens ou arabes, qui ont su coexister et créer ensemble pendant plus de dix siècles dans l'Espagne médiévale.

Dans le monde d'aujourd'hui, l'Europe tend à devenir, avec tout le poids de son histoire, une valeur refuge: le lieu privilégié du dialogue. L'Europe a relevé ce défi et montre par ses politiques qu'elle œuvre pour un monde pluriel, multipolaire, fondé sur le paradigme de la démocratie et les droits de l'homme, où chaque culture peut entrer dans un système d'échanges avec les autres, loin de tout réductionnisme.

Je lance un appel à tous, aux politiques, aux citoyens, aux acteurs de la société civile, aux «cosmo-civiques», qui, selon la définition du grand écrivain marocain Fatema Mernissi, sont «ceux qui se battent pour les mêmes idées et bercent les mêmes rêves d'une planète où les citoyens peuvent tisser mille dialogues et où les terroristes n'ont pas de place».

Ensemble, nous devons bâtir de nouveaux ponts entre les cultures. Ce n'est qu'ainsi que nous pourrons efficacement combattre l'intolérance et la xénophobie, que nous parviendrons à instaurer durablement un dialogue profitable à tous, à restaurer la confiance, à enrichir le dialogue et à renforcer la compréhension mutuelle des peuples.

Je vous souhaite un débat riche et fructueux.

Merci pour votre attention.

## Opening speech Discours d'ouverture

### Ms Mervat Tallawy

Under-Secretary-General and Executive Secretary of the Economic and Social Commission for Western Asia to the 'Dialogue between peoples and cultures: actors in the dialogue'

Your Excellency Mr Romano Prodi,  
Distinguished delegates,  
Ladies and gentlemen,

I would like to express my deep appreciation for your kind invitation to address this distinguished gathering. Allow me to congratulate the organisers for their choice of title for this meeting: 'Dialogue between peoples and cultures'. Indeed, peoples and culture are the two pillars of civilisation.

Unfortunately, the dialogue between peoples and cultures at present is dominated by the concept of the 'clash of civilisations'. I would therefore like to start by refuting this concept, which is contrary to the basic principles of civilisation, since civilisation, as defined in major references, is an advanced stage of human and social development. It is the humanisation of man in society, the refinement of the behaviour of individuals and the development and advancement of human society. It may therefore be argued that societies are civilised insofar as they succeed in avoiding wars and violence and respect the law.

I would also like to refute the idea that Islamic civilisation foments war and intolerance, and that religion is a cause of tension and hatred between peoples and cultures.

Any dialogue between peoples and cultures should address the following questions.

**First: Is it true, as claimed by the school of 'the clash of civilisations', that there is no universal civilisation?**

I believe that there is a universal civilisation, based on a set of values that are accepted by all or at least the majority of human societies. The Universal Declaration of Human Rights, the Charter of the United Nations and the rules of international law are the products of that universal civilisation. Arab countries played a crucial role in formulating and pushing through those rules.

**Second: Do those universal values mean that there is a homogenised world? Do they detract from the importance of the various and specific civilisations of the world? Do they justify the use of force by a single international hegemon in order to establish a cultural uniformity in the world?**

Certainly not. Attempts to homogenise the world are nothing but an attack on an integral component of civilisation, namely diversity. Such attempts have always ended in failure, albeit after having inflicted unlimited damage on humanity, and are bound to have similar results in the future. Those who depict the Arabo-Islamic civilisation as a force for violence and discord do not understand the meaning and message of Islam, and ignore the fact that Islam has spread to all parts of the world and that there are over one billion Muslims.

Excellencies,  
Ladies and gentlemen,

Even before Islam, the two shores of the Mediterranean were rich in cultural diversity and traditions that contributed to the earliest human civilisations. East and West have always looked beyond their borders, engaging each other in trade, politics and culture. Invariably, a veritable transfer of ideas and values characterised their common historical interchange.

More than 1 600 years ago, and on Egypt's shores, the Library of Alexandria (Bibliotheca Alexandrina) catalogued 700 000 listed and classified manuscripts, becoming the world's first university. It is there that East met West and that many Western scholars acquired and deepened their knowledge. At that time, the West had neglected many of the old civilisations, such as the Greek and the Roman, until the Muslim Caliph Mamoon Al-Rashid (who ruled from Baghdad as of 814 AD) established the House of Wisdom (Beit Al-Hikma) where Greek and other texts were translated and transmitted to Europe and beyond. Not so long ago, during the late 19th and early 20th centuries, Arab thinkers and intellectuals – graduates and teachers of Al-Azhar – advocated progressive ideas such as women's rights. Here I am referring to the likes of Muhammad Aboud, Qassim Amin, Ali Mubara, Mustapha Abdel Rasak and many others. They were perfect examples of indigenously grown reformists.

Though so positive in the past, regrettably our discourse is currently undermined by the legacies of colonial domination. Stagnant political systems have emerged and political and economic dominance has replaced debate. What were once dynamic Eastern systems of thought, economy and culture were transformed under dependence with shrunken cultural spaces. Conflict, recurrent invasions, occupation and political hegemony undermine Eastern development.

Excellencies,  
Ladies and gentlemen,

Regional intellectual milieus naturally reacted strongly against cultural and political hegemony, being, for an era, influenced by 'other Western', namely socialist, Marxist and nationalist concepts and influences, on the one hand, and by Islamic trends, on the other. The then Soviet bloc influenced regional intellectual and political discourse when younger Arabs of the 1940s and 1950s were trying to find a way out in a world of colonial dominance. Impressed by early space missions, Russian literature pre- and post-Communism, as well as by the calls for equality and decolonisation, secular socialist ideologies influenced culture and politics. This influence continued until it was evident that the eastern European bloc's performance was less than optimal. By the 1990s, the systemic crisis of 'one party States' led to its disintegration, rapidly tilting the balance towards unilateralism in international affairs.

Currently, East and West are facing a regrettable lacuna in their sociocultural and political discourse. Scenes of degrading torture in Abou Ghraib prison, indiscriminate killings and mass destruction of homes in Rafah, Falluja and Karbala distort sensibilities. The systematic failure to stop such actions undermines international credibility and shakes the foundation of the international values system.



Excellencies,  
Ladies and gentlemen,

Recent events in the region only attest to the chronic need for stability. The United Nations, led by Secretary-General Kofi Annan, has repeatedly expressed profound concern regarding the escalation of violence in Iraq, the occupied Palestinian territory and elsewhere in the Arab region. The United Nations itself has suffered losses due to this violence.

For decades now, the Palestinian–Israeli conflict has remained a major source of instability in the region and continues to claim the lives of innocent civilians. The lack of any tangible progress towards a peaceful settlement has raised the level of hopelessness and despair among the peoples of the region.

The Secretary-General, Kofi Annan, has repeatedly warned that attempts by either side to resolve this drawn-out conflict unilaterally could actually foment more anger and violence. Time and time again, the United Nations has stressed that the only realistic hope of bringing an end to violence in the occupied Palestinian territory, and in Israel, lies in addressing the root causes of the problem; that is to say, the absence of a just and comprehensive peaceful settlement, that includes Syria and Lebanon as well as the rest of the region.

In the occupied Palestinian territory, Palestinians continue to suffer from the practices of Israeli occupation, which has manifested itself in continuous settlement expansion and the erection of a barrier that has led to confiscation and fragmentation of Palestinian land. Palestinians continue to suffer from the imposition of restrictions on the movement of goods and persons, in addition to curfews, which exacerbate the humanitarian crisis in the occupied Palestinian territory as it serves to deepen unemployment and poverty, prevent healthcare, interrupt education and humiliate the Palestinian people, individually and collectively. In January 2004, I visited the occupied territory where I witnessed the suffering of the Palestinian people at the hands of occupation. A university professor informed me that in order to be able to teach two hours, she has to spend six hours on the road. 'The Israelis are stealing our lives from us', is how she related their plight. In my personal view, the world has forgotten the word occupation and the Palestinian right to resist occupation by legitimate means as sanctioned by international norms and conventions.

In Iraq, the security issue remains a major obstacle to reconstruction efforts and to the political process. However, there is a consensus that there is no military approach to this problem. Moreover, and as Mr Lakhdar Brahimi pointed out, violent military action by an occupying power against the inhabitants of an occupied country will only make matters worse. It is definitely time now for those who prefer restraint and dialogue to make their voices heard. We all want to see the end of the occupation and violence, and the establishment of a genuinely representative government.

Excellencies,  
Ladies and gentlemen,

Naturally, wars and occupation as well as political uncertainty have gravely affected the region's socioeconomic conditions. For example, ESCWA studies illustrate that without the 1990–91 war, western Asia would have been at least six hundred billion dollars richer. Half the number of persons now looking for work could have been gainfully employed in relatively decent jobs.

If the region did not spend more than twice the world rate on armaments, if it enjoyed relative stability and the very same level of economic integration that now exists between the European Union, western Asia could have easily enjoyed growth rates similar to those of south-east Asia. After all, western Asia is a region that is rich in resources, but it is also a region that cannot mobilise the full extent of its resources for the purpose of development because of real or perceived instability.

Undoubtedly, you will all agree, wars and occupation are not a conducive environment to dialogues between peoples and cultures. On the contrary, they provide fertile ground for hatred and extremism. In order to maintain the dialogue we have to reverse current trends. Instead of war and conflict, we should revert to cooperation, make globalisation more human, liberalise trade in a fair manner, realise the United Nations millennium development goals, which include reducing high illiteracy rates and eliminating poverty rates. Furthermore, development aid programmes should be intensified not diminished, and the digital divide should not be allowed to be a factor that widens the gap between north and south.

Excellencies,  
Ladies and gentlemen,

Since the Arab region is in Europe's backyard, Europe should assume a pivotal and more proactive role in our political and socioeconomic concerns.

We in ESCWA, as the regional arm of the United Nations, have persistently addressed issues of regional economic and social development and integration. We consider stability and a just peace in the region as preconditions for development.

I invite the institutions and Member States of the European Union to make use of ESCWA's expertise and to attend its meetings as observers. I also invite them to join ESCWA in implementing vital projects in our priority areas of work, namely water, globalisation, technology and social policies.

This forum will discuss cultural differences. However, it should also address economic, social and political disparities. Without adequate education, and sufficient employment, Eastern cultural aspirations are frustrated. Fostering further understanding will require a discussion of major programmes: political, cultural, economic, social and institutional. Our dialogue between peoples and cultures, I am sure, will yield interesting outcomes and hopefully fruitful joint programmes of action.

Thank you.



# W O R K S H O P 1

The networks of the Mediterranean  
(Euro-Mediterranean Foundation for Culture)

# A T E L I E R 1

Les réseaux de la Méditerranée  
(Fondation euro-méditerranéenne pour la culture)

## Prof. Malek Chebel

Paris

Souvent, la culture est le parent pauvre des projets grandioses. Il arrive que plus le projet est grand, plus la part réservée à la culture est réduite ou entravée. Fort heureusement, tel n'est pas le cas pour l'Europe, de l'Europe d'aujourd'hui, celle qui se construit sous nos yeux. Aussi, dans cette nouvelle Europe qui vise à valoriser la culture, autant que les autres secteurs, dont l'économie, nous pensons que les réseaux sont le fer de lance d'une telle politique, le compromis nécessaire qui permet à la culture de se hisser au niveau des autres problématiques. Il s'agit surtout de montrer que la coexistence pacifique, le voisinage ou la complémentarité des avoirs, des savoirs et des sensibilités, toutes choses se résumant par la notion de paix, n'auront aucun sens si la dimension culturelle est sacrifiée, ou minorée.

C'est pourquoi la discussion s'est engagée autour de trois axes forts:

- La Fondation euro-méditerranéenne peut devenir un «réseau des réseaux». Celui-ci aura pour vocation d'établir la liste de tous les réseaux possibles et de veiller à leur interactivité. Un travail spécifique sera alors consenti en direction de l'information à l'«interne», de façon à enrichir la palette du possible. «Réseau des réseaux» ne signifie pas pour autant que la Fondation sera un simple *desk* ou une plate-forme pour doléances venant du terrain. Elle aura au contraire la capacité d'agir sur le réel, notamment en suscitant des projets qu'elle nourrira et qu'elle enrichira au fur et à mesure.
- La Fondation euro-méditerranéenne sera-t-elle un label? C'est également un choix parmi tous les choix possibles, sauf que les labels ont montré leur capacité d'inertie et leur caractère strictement symbolique. Nous ne croyons pas que la situation actuelle permet une telle prise de risque. À terme, le label européen sera pourtant extrêmement précieux pour investir le côté qualitatif des propositions venant de tous les coins de la zone euro-méditerranéenne. Un plus qui sera sans nul doute apprécié par les artisans de la culture et qui fonctionnera comme une émulation supplémentaire pour atteindre cette qualité.
- Enfin, une troisième piste avait été explorée: l'Europe elle-même ne pourrait-elle pas s'engager dans la création et la production d'œuvres culturelles, au sens où le ferait un organisme prestigieux comme l'Unesco? Les thèmes communs en sont extrêmement nombreux: architecture, musique, peinture, arts liés à la mer, cultures populaires, festivals, expositions itinérantes, etc. Mais une fois la question posée, une multitude d'interrogations nouvelles naissent aussitôt. Si, en effet, la Fondation euro-méditerranéenne pouvait devenir elle-même un opérateur de la culture parmi tant d'autres, quelle en sera exactement le statut et la nature? Gardera-t-elle un minimum d'indépendance dès lors qu'elle sera appréciée et jugée par l'ensemble des citoyens? N'aura-t-elle pas au contraire la tentation de vouloir convaincre au point de mélanger culture et politique, culture et idéologie? Quelle place aura le fait religieux dans cette instance? Quelle place auront les minorités nationales, les groupes et les ethnies, les jeunes? La femme sera-t-elle un enjeu à part? Enfin, quelle culture promouvoir? Faire du neuf à partir de l'ancien, et quel ancien? etc.

L'idée maîtresse qui a dominé nos débats, et cela depuis le début de la séance, a été la suivante: comment imaginer une culture euro-méditerranéenne qui nous aide à parachever l'ambition actuelle de l'Europe à vouloir intégrer plusieurs centaines de millions de personnes, tout en donnant à chacun les moyens de s'exprimer librement et d'inventer son propre projet. Pour ce faire, un dialogue concret devrait intervenir rapidement entre les différents partenaires présents. Ce dialogue n'aura aucune valeur symbolique s'il demeurerait limité aux seules élites, déjà largement solidaires entre elles et bien conscientes des nécessités du moment. Il faut au contraire l'élargir à un maximum de concitoyens et d'usagers. Ce travail concret a une autre vertu. Il permet aux responsables de la programmation culturelle au sein de la Fondation d'identifier les différences et les similitudes entre les profils culturels afin d'évaluer les besoins. Sur cette base, de nombreuses décisions peuvent être prises à l'avantage de tous.

L'un des rôles principaux de la Fondation serait donc d'agir comme catalyseur et comme médiation. Ses thèmes de prédilection seraient la famille, l'éducation, la mobilité des jeunes, le rôle des femmes dans la sphère publique, le patrimoine culturel – et sa conservation, le cas échéant – et l'innovation dans tous les domaines de la culture.

Autre aspect original, les réseaux du savoir. En effet, on peut parfaitement imaginer que la Fondation puisse également mettre en contact les organisations de la société civile avec les universités de la zone euro-méditerranéenne. Ces deux entités mettraient alors éventuellement en commun leur *know how*, anticipant ainsi la création du réseau des réseaux. De telles initiatives peuvent d'ailleurs intéresser des sponsors privés, lesquels viendraient renforcer la participation des universités et des organismes publics.

La seconde partie de la séance était consacrée au débat et aux interventions des nombreux responsables des réseaux méditerranéens qui étaient non seulement présents, mais extrêmement attentifs.

Voici une série de réflexions qui ont été formulées par les participants à l'atelier:

- 1) Une grande attente de la part des participants de la société civile et des réseaux constitués (universités, réseau Jean Monnet, etc.) avait pour toile de fond une question cruciale: la Fondation euro-méditerranéenne pour la culture aura-t-elle les moyens de ses ambitions et donnera-t-elle un supplément de crédit aux ambitions affichées tant à Naples, en Crète qu'à Dublin?
- 2) Un grand nombre de questions ont abordé l'aspect organisationnel de la Fondation: sa structure, son fonctionnement, sa direction, son expertise, mais aussi sa capacité d'agir, son indépendance, ses objectifs, voire sa définition en tant qu'entité euro-méditerranéenne.
- 3) Quel type de feed-back mettra-t-elle en œuvre pour tenir compte des attentes et des aspirations formulées sur le terrain?
- 4) Comment la Fondation pourra-t-elle éviter de devenir le clone de l'Unesco, tout en œuvrant à un rapprochement actif avec ce genre d'institutions internationales?
- 5) Quels seront les critères de sélection et de participation des réseaux venant de la Méditerranée, et donc quel profil pour les responsables de la Fondation?

- 6) Parmi les doléances, il faut rappeler celle qui touche à la synergie des moyens et des acteurs en vue de leur donner un maximum de lisibilité. Elle aura à elle seule résumé la plupart des attentes. Synergie entre les différents acteurs, oui – c'est le réseau des réseaux –, mais synergie aussi en ce qui concerne les moyens, et c'est là une interrogation différente et spécifique à la Fondation.
- 7) Plusieurs thèmes sont revenus au cours de cette seconde partie de la matinée. Peut-être faut-il en rappeler quelques-uns:
  - d'abord, l'importance de l'éducation du citoyen euro-méditerranéen à la découverte de son patrimoine, de son identité culturelle commune et des moyens de les préserver;
  - ensuite, l'interactivité entre les différents organismes, universités, bibliothèques, centres de production culturelle, chorégraphes, laboratoires divers, cuisine, terroirs, héritages, circulation de biens culturels, etc.;
  - enfin, les médias. Les médias peuvent elles-mêmes devenir une sorte de super-réseau, avec une vocation affichée, une ambition, celle de faciliter les contacts entre les différents peuples de la mosaïque euro-méditerranéenne.

En conclusion, nous souhaitons attirer l'attention des politiques sur deux éléments essentiels:

Le premier est lié au financement de la Fondation. Nain ou géant culturel, la Fondation sera à l'image des fonds qu'elle réussira à lever, tant auprès de la Commission européenne ou du Parlement que dans le secteur du mécénat privé. C'est le tendon d'Achille de la Fondation et son véritable horizon.

Le second point concerne les hommes. Tant que nous aurons une politique des visas aussi sévère entre les différents pays, et en particulier entre les pays du nord et ceux du sud de la Méditerranée, le problème des échanges et le maillage que nous avons à maintes reprises abordés durant nos travaux resteront lettre morte. Il faudrait donc imaginer un dispositif plus équilibré qui favorise la mobilité des jeunes de tous les pays limitrophes et qui les encourage même à quitter momentanément leur pays d'origine pour se frotter (et se confronter) à d'autres sensibilités. Un passeport culturel méditerranéen pourra être institué afin de voir émerger ce dialogue civilisationnel auquel nous tenons tant.

### **Malek Chebel**

(sur la base des différentes interventions de l'atelier 1)

## 'Doing with others as we do among ourselves'

**Peter G. Xuereb,**

Jean Monnet Professor, European Documentation and Research Centre, University of Malta <sup>(1)</sup>

### Introduction

Jean Monnet once said: 'Where solidarity is apparent, it is not necessarily natural. It must therefore be organised'. This paper focuses on the Mediterranean, in the context of the emerging neighbourhood policy and the draft Constitution for the European Union <sup>(2)</sup>.

In the context of the Euro-Mediterranean partnership, certain priority areas have already presented themselves in recent years, such as security issues, the creation of the infrastructure needed for regional trade in the realms of transport, communications, and energy; the further development of regional cooperation structures; the involvement of civil society and dialogue and networking between civil societies. However, it is clear that the Barcelona process is being exponentially extended and moreover it is equally clear that for the new neighbourhood policy no policy areas are to be *ex ante* excluded, so that we can look forward to cooperation in all areas. Therefore it seems to me that it is of the utmost importance to lay the ground rules for the relations between the Union and its neighbours on which this cooperation will be built.

To do this we need to start, I think, from the impact of enlargement and the adoption of the new Constitution on the relations between the Union and the Member States themselves. The draft Constitution after all provides in Article III-193 that 'the Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement'. On the principle of do with others as you do among yourselves – as the best and in my view the only true witness to the values of the Union – we should then ask how best we can truly practice those same values (regarded by the Union as universal and indivisible) <sup>(3)</sup> and possibly 're-employ' the mechanisms which secure them, in our relations with others, and in particular with our Mediterranean partners. This paper is written at a time when the EU is consulting with its Mediterranean partners in the lead up to the European Council in June 2004, where the next-generation EU strategy and the means to implement it will be adopted. The Commission has just published its European neighbourhood policy strategy paper <sup>(4)</sup>.

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<sup>(1)</sup> Professor of European and Comparative Law; Jean Monnet Chair; Chairman, European Documentation and Research Centre, University of Malta. Please note that this paper seeks to provide the wider background and context that are important for the purposes of the particular conference workshop in which I acted as discussant. Readers focusing more narrowly on the specific theme of the workshop (i.e. the role of the Euro-Mediterranean Foundation) will find sufficient the opening pages and Part Three of the paper. The paper reflects the position at May 2004.

<sup>(2)</sup> The draft Constitution as referred to in this paper is the version extant at the time of writing, i.e. OJ C 169/1, 18 July 2003.

<sup>(3)</sup> Preamble, Part II of the draft Treaty establishing a Constitution for Europe (hereinafter referred to as the draft Constitution).

<sup>(4)</sup> Communication from the Commission, 'European neighbourhood policy strategy paper', Brussels, 12.5.2004, COM(2004) 373 final.



I have therefore chosen to focus not so much on what the areas of cooperation should be, for the Barcelona process is already a wide-ranging multilateral and bilateral process, but more on the question of 'how?' or, to be more specific, on the question of 'on what principles, and where embodied and how implemented?' How and at what level should objectives be set, explorations of priority areas be coordinated, and consistency be ensured between the various undertakings of the Union, the States and the regions, and then between the Union and its neighbours? I feel justified in this focus because the question concerns the collective future that the 453 million men and women who will now make up the European Union will build for themselves and the means employed, or to be organised, in order to make enlargement – one vital aspect of which is the enlarged EU's common project with its neighbours – a success. I describe this common project as the creation of an area of peace, prosperity and progress<sup>(5)</sup> that is pan-Euro-Med-wide. Only dialogue can achieve it, but principles must be at the basis of all dialogue.

### **The starting point then has to be the draft Constitutional Treaty itself.**

The calls for a successful outcome of the IGC of 2003/04 were many. Not only, but the calls, after the 13 December debacle, were for an outcome based on solidarity in a specific sense – that is, an outcome based on cohesion/inclusion within diversity. The present writer has spoken in the past of the need to articulate and 'proceduralise' – and possibly 'institutionalise' – the vision of 'unity in diversity', on the basis of the values of inclusion and cohesion with coherence and appropriate differentiation – as underpinning the success of the European project in the future. Inclusion can only occur if all Member States and 'not so new' and 'new' neighbours are in some way 'included' in each aspect of the Union's activities. I take this as far as to say that even if a Member State is not to participate actively in the full implementation of a particular policy it should nonetheless be included in the framing of such policy – *multo magis* if it is to be a full participant. Our studies as part of the Euro-Med transnational regional research project indicate that it is the aspiration of the Mediterranean partners that this same approach be extended to them<sup>(6)</sup>. The Presidency conclusions of the Euro-Med Conference of Ministers, held in Naples on 2–3 December 2003, spoke of 'improving the contribution by the Mediterranean partners to the outline of policies and their relevant implementation' (para. 4) and of 'the joint ownership of (the Barcelona) process' (para. 7). There have been many calls for this in the peace and security area<sup>(7)</sup>. There can be little doubt in any case as to certain specific initiatives that apply to the Mediterranean area, such as the common management of the Mediterranean Sea, which cannot be approached without the fullest participation of all partners, a point made by the Maltese representatives at the Convention on the Future of Europe. Building on the UN initiatives of the plan for the Mediterranean, the Barcelona Convention and subsequent developments, a common approach underpinned by common rules implementing the idea of common heritage can form part of an even wider pan-Euro-Med environmental policy. I am sure that this view is shared by France, which has taken a lead in this matter<sup>(8)</sup>, and the other Mediterranean Member States.

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<sup>(5)</sup> See the 'Interim report on an EU strategic partnership with the Mediterranean and the Middle East', *Euromed Report*, Issue No 73, 23 March 2004.

<sup>(6)</sup> *Rapport d'information sur l'avenir du processus euro-méditerranéen*, Assemblée nationale No 1297 of 16 December 2003, p. 34. Report submitted to the French National Assembly.

<sup>(7)</sup> J. Limam, 'La sécurité en Méditerranée du partenariat au voisinage: Ou la longue marche vers une sécurité coopérative', in Xuereb P. G. (ed.), *Euro-Med integration and the ring of friends* (EDRC, 2003), pp. 157–177; see also Mohammed El-Sayed Selim, 'Some conceptual issues in the projected Euro-Mediterranean Charter for Peace and Stability', EuroMeSCo Working Group Paper, October 1999.

<sup>(8)</sup> French National Assembly Report, cit. note 2, p. 36.

[This is also the case] in relation to defence and security issues <sup>(9)</sup>: True dialogue is urgently needed at all levels, political and expert, in this area, and the Euro-Med Conference of Ministers welcomed the launch of dialogue and cooperation on ESDP in Naples in December, a major step forward. But many would argue that the forging of a common approach is furthermore urgently required rather than simply looking ahead to 'eventual, possible cooperation in ESDP activities on a regional, subregional or country basis'. This would require true partnership, as Limam has argued, building on the concrete measures decided at Naples <sup>(10)</sup>.

Gillespie and Youngs <sup>(11)</sup> recently warned that besides the lop-sided nature of the EMP itself, the commonly expressed sentiment that the EU was 'seeking to impose European values' may find further sustenance in the new 'Wider Europe' strategy of the EU. They pointed out that the March 2003 Commission communication <sup>(12)</sup> adopted a 'benchmarked approach' to EU policy towards its neighbours and implies 'the partners taking on considerably deeper and broader obligations, specifically when it comes to aligning with Community legislation', with the document referring to political as well as economic benchmarks as forming the basis of future action plans. They argued that it is important for Europe to hold on to its distinctive 'partnership' approach to the Mediterranean.

But if we desire moves to and beyond co-management to co-ownership and co-responsibility, it seems to me that the greatest gift in the power of the EU is to 'extend' such as it can of its own processes even as it improves and refines them internally in the light of its own enlargement experience. To Gillespie and Youngs' statement that 'It is entirely normal for a large multinational entity to seek to project influence', as they put it, 'but it will only succeed in the context of the "near abroad" if it pays due attention to the particularities of each neighbour and neighbouring region', my response is to agree but to add that the Treaties and the draft Constitution show just how it is possible to manage diversity and practise solidarity on an institutionalised multilateral basis while pursuing 'agreed' values. This is of the best that the Union has to give, in the end, to the 'common project' of peace and prosperity in the pan-Euro-Med area. On the other hand, a degree of supranationality was built into the Union project from the start, and surely explains the later evolution of the Union model. It has been remarked <sup>(13)</sup> that 'there are some good ideas' in the Union project that might inspire the further evolution of the Euro-Med partnership or even of the neighbourhood policy.

I therefore propose to indicate how I see some relevant parts of the draft Constitution, and then suggest that in the multilateral context this, enlargement, and the EMP experience to date imply the need to update the Barcelona Declaration. It is certain that the 'Wider Europe' policy will also impact as it evolves. I would argue that the 'EU cohesion/solidarity model' commends itself as a model going beyond partnership agreements (such as the Cotonou Agreement) as the basis for a true 'special relationship' agreement, mainly as one that does bind to agreed common objectives on the basis of shared values but does so in a multi-polity framework and

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<sup>(9)</sup> Limam, cit. supra. French National Assembly report, cit. p. 21. Presidency conclusions, Barcelona VI, 2-3 December, Naples, para. 31.

<sup>(10)</sup> For a recent evaluation, see Alvaro Vasconcelos, 'Launching the Euro-Mediterranean security and defence dialogue', EuroMeSCo Briefs, January 2004.

<sup>(11)</sup> R. Gillespie and R. Youngs, 'Democracy and the EMP: European and Arab perspectives', EuroMeSCo Briefs, December 2003, especially p. 7.

<sup>(12)</sup> Commission communication, 'Wider Europe – Neighbourhood: A new framework for relations with our eastern and southern neighbours', 11 March, COM(2003) 104 final.

<sup>(13)</sup> See infra, Part 3 of this paper.

with loyalty and solidarity based on dialogue; these ingredients, properly articulated and suitably institutionalised, cannot fail to produce in time the same results around the Union as they have produced within it. Whether the time has yet come to consider drafting a new fully-fledged framework treaty in such a way as to put the partners on the road to full integration is an open question, especially if true involvement in overarching supranational institutions is not envisaged. Nevertheless, I would argue that if we can in some way heighten in the Euro-Med partnership some of the key elements – such as the 'cohesion dynamic' – in the Community/Union model, while maintaining the essential flexibility, differentiation and conditionality elements of the current Barcelona method, this could secure quicker and better results.

It is true that the Barcelona process has put in place a framework, and that it has had some notable successes, but the March communication was designed to respond to shortcomings in it and in the partnership and cooperation agreements with the central and east European States. It does offer a new approach to the pursuit of objectives based on regional and country action plans, and provides that these would be jointly formulated at regional or bilateral level as appropriate. The communication's promise of 'differentiation' and 'progressivity' lies with these action plans. But I would argue that an updating of the declaration would bring about greater cohesion, with that differentiation and conditionality, by tightening up on the objectives, policies and instruments, including the introduction of some form of enhanced cooperation, through the use of a framework treaty at Euro-Med level and providing for enhanced cooperation, a system which would ideally always involve the European Union itself as one of the closer cooperators<sup>(14)</sup>.

Martin Ortega has argued that the Union had already, in the Barcelona process as reinvigorated, 'established a very detailed Mediterranean policy based on the principles of partnership and the creation of a zone of prosperity and stability that is still valued. The new differentiated, progressive and benchmarked approach may complement and to some extent correct the Union's "traditional" policy but does not transform it'... 'However,' he says, 'to attain its objectives in a completely satisfactory way, the Member States should reaffirm their involvement with determination and show more ambition ... strengthen the political dialogue and be more insistent on the introduction of democracy and peaceful negotiated resolution of the Israeli-Palestinian conflict, open its markets in agriculture and increase human and cultural exchanges'<sup>(15)</sup>.

Beyond this, and the burden of this paper, is the crucial point that the process as I see it evolving should deepen the multilateral tie and also the bilateral, by common or joint formulation of the regional and country action plans, all of which would provide for targets, benchmarks and reviews. In the process of such formulation and implementation, with full dialogue that is multilateral and bilateral as appropriate, I would argue, the formula and principle for action should be made explicit, and be based on the principle of 'do with others as you do among yourselves'. This means the unequivocal search for maximum cohesion (inclusion and participation of all States and non-State actors) via sufficient integration (proportionality) with necessary differentiation (derogation/assistance/transitional periods, etc.)<sup>(16)</sup>. The adjectives are important. An important difference as far as its application in the Euro-Med context was concerned would be that it would be applied on a case-by-case basis to each Mediterranean partner or

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<sup>(14)</sup> See Catherine Fleisch-Mougin, 'Differentiation and association within the pan-Euro-Mediterranean area', in M. Maresceau and E. Lannon, *The EU's enlargement and Mediterranean strategies – A comparative analysis* (Palgrave, 2001), pp. 63–96.

<sup>(15)</sup> Martin Ortega, 'A new EU policy on the Mediterranean?', Chailot Papers, No 64, September 2003, pp. 86–100.

<sup>(16)</sup> This should make for a 'more streamlined and coherent approach' and for one that can combine elements of both stabilisation and integration, with regionally focused as well as country-tailored programmes. A. Missiroli, 'The EU and its changing neighbourhoods: stabilisation, integration and partnership', Chailot Papers, No 64, September 2003, pp. 9–32.

group of partners rather than in a framework of direct applicability after majority voting in overarching institutions, as is the case in the EU for most areas of policy.

### *The draft Constitution*

On his visit to Malta in February, Gerhard Schröder gave a diplomatic warning. He said that the technical consequence of a failure to agree a Constitution would be the creation of a two-speed Europe. He seemed to regret the possibility of such an outcome and was implying that the draft Constitution provided an optimal balance such that policy-shaping and policy-making as set out in the draft Constitution, with such variation as has been provisionally agreed in the course of the IGC under the Italian Presidency and since, would negate the possibility of a two-speed Europe and thus *a contrario* ensure inclusion and cohesion. I would argue that the draft Constitution has, like all Treaties before it, bridged the gap to provide an infrastructure for cohesion/inclusion with solidarity. It will be shown here in broad sketch how this was done by drawing on some examples and it will then be stated that this 'model' might be built upon in the wider pan-Euro-Mediterranean area, bearing in mind that the perspective of membership is 'currently' outside the prospect for the Mediterranean States (except Turkey). While 'multi-speed' is clearly unavoidable in a neighbourhood context, I submit that the structures should be put in place to facilitate maximum cohesion. This means multilateral dialogue (multilogue?) and mutual support.

In the first part of this paper I set out the principle of two-way loyalty and the importance of the ongoing dialogue between the EU and the national Member State legal (etc.) orders even in the context of decision-making by majority vote. In the second part, I broadly sketch some provisions of the draft Constitution with a view to highlighting some major examples of the search for cohesion (definable as the search for the participation of the greatest possible number and to the fullest possible extent of Member States in the formulation and implementation of EU policy) with differentiation. My point is that there can be and, I argue, there should be differentiation where this is objectively grounded, and this on the principle of mutual respect but that all efforts at inclusion must be made. What I say is that the overall philosophy, with the ultimate objective of unity in diversity, can be described as maximum cohesion with necessary differentiation. What is required is a framework that allows that balance, perceived by the author as the true 'optimal balance', to be struck. Inclusion and cohesion, both of which are furthered in the long run by justified differentiation, are arrived at via procedures, instruments, rights and obligations that further the objective while observing the general principle of solidarity as properly understood. This rests on two-way loyalty. How, then, does the draft Constitution enshrine two-way loyalty, such as to maximise cohesion and minimise differentiation while, however, permitting and even demanding the latter (with obvious short-term attenuation of cohesion) on criteria of necessity and proportionality and after resort to the fullest possible dialogue?

The key word is dialogue, for it is the key prerequisite for the proper practice of solidarity. As there is a perceived need to relaunch the structures of dialogue at global level so also, we know, there is a need to do this at the level of relations between the EU and our Mediterranean neighbours. An anterior question is: what should the principles informing dialogue and decision-making be? We often think we know the answer to this question, but I would argue that the circumstances are such that we should begin to think more carefully about how greater cohesion can be secured and also about what solidarity based on two-way loyalty truly entails. I think that this applies especially to the relations between the Union and its neighbours.

## Part 1: Relations between the Union and the Member States.

### Solidarity as a value and a principle.

#### A model for relations with our neighbours?

Solidarity does not strictly appear as a value in the draft Constitution, but as part of the context wherein the values operate, it would seem. Article 2 sets out the values as being respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. It then goes on to state that: 'These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination'. The 'society' (although this seems to be stretching the use of the word in sociological reality) referred to can only be the 'European' society, so that the use of the term 'society' is one example of the 'polity-creating' dimension of the draft Constitution. It is this 'emergent society' that will be judged by its neighbours on three counts: how it treats its own members, how it treats others, and whether it treats its members and others differently.

But the main point here is that solidarity, together with tolerance and the other values, is taken as given. Yet we know that these values cannot be taken as a given present and continuing state of fact even in the most developed and civilised Member States, so that the provision is surely also intended to have normative effect; we know, if we are honest, that these values, which they undoubtedly are even though they appear in sentence two and not sentence one, need to be fostered and implemented at European level as among the Member States. This must be the main argument for putting them, as values, on a par with the values set out in the first sentence.

When Article 3 states that the Union's aim is to promote peace, its values and the well-being of its peoples, then, it is clear that Article 3 obliges the Union and its institutions to observe and promote those values *inter alia* in their dealings with and relating to each and all Member States. The well-being of its peoples is an inclusive aim, in the course of the attainment of which the value of solidarity, in the sense in which I am using it, must be clearly and fully practiced. One would therefore expect to see this spelled out in any specific provision on the relations between the Union (now endowed with legal personality) and the Member States.

This leads us to Article 5 of the draft Constitution, which is titled: 'Relations between the Union and the Member States'. Of course, much of the Constitution covers aspects of these relations. But Title 1 of Part I speaks directly to this. Article 5 spells out this concept. It provides in paragraph 1 that:

*'The Union shall respect the national identities of the Member States<sup>(17)</sup>, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.'*

This appears to be recognition of the constitutional court reservations to the primacy rule, i.e. the supremacy of Community (Union) law, and it is noteworthy that these 'reservations' find their place in a Constitution that for the first time sets out the primacy principle (Article 10).

It is paragraph 2 of Article 5 that appears to enshrine the active principle intended to 'activate' and animate this relationship between the Union and the Member States. It sets out the principle of loyal cooperation, perhaps the clearest active principle of action that guides the

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<sup>(17)</sup> An obligation that is far from being without normative content, even if the parameters are rather vague.

relationship. It provides that, 'following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Constitution'. For the first time, the Constitution sets out clearly the mutuality of the duty of loyalty. Of course, as has been said, the European Court has never insisted only on one-way loyalty, and it has been cogently argued that the European Court of Justice, while emphasising the rule of law and that the Treaties were a constitutional order under the rule of law, was always engaged in a dialogue with national constitutions and national constitutional courts. This explains the 'recognition' and acceptance of the principle of primacy itself as a general tenet, and of much else besides, including the doctrine of direct effect and the State liability principle of *Francovich* <sup>(18)</sup>.

This mutual loyalty is stated then to apply in 'the carrying out of tasks which flow from the constitution'. Is this capable of interpretation in any sense as a limited or restricted application, so that the reference to 'carrying out tasks' operates as a limit on the 'reach' of the deliberative or discursive dialogue that it arguably requires to be put in place? In other words, the provision can certainly be regarded as one of those 'meta-rules' governing the space between Union and Member States; but what is its reach? Surely, the phrase 'tasks which flow from the constitution' refers to the tasks to be carried out in common under common policies and all forms of cooperation, and includes presumably the obligations imposed by Union law, even where decisions are adopted by majority rather than by unanimity. It would appear to be all embracing, covering all aspects of Union/Member State activity under the 'Treaty'. The question is as to the content and the extent of the Union's 'duty to assist'. The duty to assist is an inseparable part, in my view, of the case for the legitimacy of Union action at Member State level; it is vital to the idea of democracy in the European political sphere. It is vital in particular to the legitimacy of majoritarian decision-making. It is almost trite today to say that we think not in terms of government in the European context but of governance, embracing the concept of multi-level or better multi-polity governance. 'Good governance' broadly expresses the idea that, in order to be legitimate, public power ought to be based on principle(s). What these may be remains vague, but reference is most often made <sup>(19)</sup> to those set out in the Commission's White Paper on governance, namely openness, participation, accountability, effectiveness and coherence. I have argued elsewhere <sup>(20)</sup> that solidarity (which must clearly inform the duty to assist) is a key value in this regard. It is supremely relevant to the exercise of public power. It is certainly implicit in the demand for the application of principles of good governance: openness and participation, and possibly also accountability and effectiveness as well as coherence. Indeed it is a value informing all action. It is here in the draft Constitution expressed, apparently, as a duty to assist in the carrying out of tasks. But this can be only one aspect of solidarity; for the process of the definition of the tasks, as well as the taking of the operative decisions operationalising those tasks, must also themselves be rooted in solidarity if the decision-making as to task-setting is itself to be imbued with legitimacy.

The Commission has a crucial role to play in all this. It has always been the quintessential 'broker of interests' in pursuit of the 'general interest of the Community' <sup>(21)</sup>. In the light of co-decision and increased majoritarianism (and one could add, enlargement and greater diversity among

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<sup>(18)</sup> A. Verhoeven, *The European Union in search of a democratic and constitutional theory* (Kluwer Law International, 2002), pp. 291 et seq.

<sup>(19)</sup> See A. Verhoeven, *cit.* p. 200.

<sup>(20)</sup> Peter G. Xuereb, 'Solidarity and constitutionalism: Towards a solidarity model', (2002) *European Law Review*, Issue No 6, pp. 643-662.

<sup>(21)</sup> Article 213(2), EC Treaty.

the Member States), all the more crucial becomes its role of mediation and brokerage of interests, thereby ensuring that it can be justified in guarding that the *acquis communautaire* and overall consistency of Community (Union) law is respected. Yet arguably its role as a broker has been somewhat diminished by new forms of cooperation/decision-making (as in the social dialogue area), and by its comparative marginalisation in the development of certain policy areas, and it is important to keep under review the effect of this attenuation in the Commission's role, for the Commission has been a vital element in the securing of unity in diversity. A major part of this role is the capacity and indeed the obligation to consult in the widest possible sense, and the draft Constitution sets out the obligation of the Commission to carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent <sup>(22)</sup>. The Commission has also traditionally had a vital role to play in 'controlling' resort to enhanced cooperation <sup>(23)</sup>, which is potentially a tool for a two-speed Europe and one that may offer itself up temptingly as an easier option than the full engagement in the 'deliberative/discursive dialogue' that is so necessary in the democratic system of equals which is the Union. Moreover, the current Treaties as a rule entrust the Commission with the task of administering the many safeguard clauses that exist in primary <sup>(24)</sup> or secondary law, and this has presented the Commission with a powerful tool to propose or validate any differentiation for which the decisional process might not have adequately catered, as also to restrain the unjustifiable 'opting out' of adopted measures by any Member State. Again it can be asked whether the draft Constitution preserves or enhances the Commission's capacity to respond to individual Member State needs and peculiarities or otherwise, while bearing in mind that the Commission's main task must be read as furthering the goal of 'an ever closer Union of States and peoples'. Yet even this aim, if solidarity is a value and a principle for action, must be pursued in a spirit of mutual loyalty. The duty of loyalty, even as enshrined in the current *acquis*, is two-way.

As Verhoeven has put it: 'Loyalty, not hierarchy (between one order and another), is the paradigm' and 'mutual recognition (e.g. in the internal market sense) is ... the story of overlapping and interlocked legal orders that recognise each other's autonomy and difference within set and mutually acceptable limits. Recognition of the other must leave room for overriding concerns of domestic policy and is subject to the requirement that a common ground of fundamental values is respected' <sup>(25)</sup>. This of course, in the Union context, applies also to majority voting in the Council: 'Its significance as a principle is, therefore, much wider in the EU context than the *Cassis* judgment of the European Court (i.e. the internal market context) would make us believe. Regulatory autonomy of each and any governance level of which the Union is made up depends ... upon a mutual recognition by the others. Such recognition is predicated, in turn, upon a minimum agreement on common constitutional principles' <sup>(26)</sup>.

As Verhoeven says <sup>(27)</sup>, if loyalty, as expressed in Article 10 EC Treaty (Article 5 of the draft Constitution), is a principle, the basis for loyalty of the Member States, even towards the

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<sup>(22)</sup> Article I-46(3), draft Constitution.

<sup>(23)</sup> A request for such must go to the Commission, which may choose not to make a proposal to the Council in favour of such, while being obliged to explain its reasons if deciding not to do so. Note that under the third pillar, the Commission is merely asked for its opinion. After Nice, authorisations by the Council can be given by majority vote, making the role of the Commission even more important for 'minority States'.

<sup>(24)</sup> See, for example, Article 95 EC Treaty, especially paras 4 and 10, and see Peter G. Xuereb, 'Solidarity and constitutionalism', cit. note 20. See also Verhoeven, cit. p. 236.

<sup>(25)</sup> Verhoeven, cit. p. 309

<sup>(26)</sup> Ibid.

<sup>(27)</sup> Cit. p. 305.

primacy of Union law and the Union's objectives even in the absence of hard law in the field, is that it carries the message that the EU legal order can be autonomous only to the extent that it is accepted; and it is accepted because the Court of Justice has read loyalty not as a one way street but as a mutual obligation, owed by the Member States to the Community (Union) and vice-versa. This means that the Constitution must reflect, and continuously be read as reflecting, this 'constitutional dialogue' if we are to continue to build a European constitutionalism and a European legal area based on 'mutual recognition', i.e. a 'multilevel' or rather a horizontal or pluralist or multi-polity constitutional space. Separate 'super rules' will continue to exist, and therefore the Constitution must lay down 'meta rules' based on common values and constitutional principles to regulate this meta space between the national legal orders and polities and a European Union legal order and polity which nevertheless uncannily embraces them. As in a federation, the meta rules must bind while respecting autonomy, and the values of the Union, including respect for diversity, solidarity and cooperation must be set out, but their very interpretation must be the subject of a dialogue, for they are bottom-up values. By contrast with federations, European constitutionalism is more than equally 'bottom up'; even the primacy rule is bottom up, because it depends for its force not only on the notions of command or sanction, but on ongoing consent, and consent is forthcoming in direct proportion as the common values, themselves the product of ongoing interaction between polities, are put into practice as a matter of both process and substance.

The decision was taken early on in the debate on the future of Europe, and even in advance of the Convention on the Future of Europe, not to create as of now a United States of Europe; it was realised that the Union is now, and will foreseeably remain, the result of a sharing and therefore a mutual recognition of sovereignty, which requires a relationship of loyalty. It is certainly clear, writes Verhoeven, that Article 10 EC Treaty, which has featured as the legal basis for much recent ground-breaking case-law of the European Court of Justice, imposes duties on all public powers in the European space; it entails positive duties and negative duties, and comprises procedural duties (duties to follow certain procedures) as well as substantive duties. Hence, loyalty must also address process. For mutual loyalty requires dialogue.

I would therefore argue for an interpretation of Article 5 of the draft Constitution against the background of the European Court's history of 'dialogical' decision-making (including its approach to Article 10 EC), consensus-seeking even in the Council, the solidarity-based Commission approach to identifying the general interest within the 'Community method', and the general approach in the Treaties thus far in safeguarding major needs and mandatory requirements. Some may comment that this was an opportunity lost to be even more specific, especially when the Constitution is meant to set out the best of the Union – its pluralism – and this exists to be set out. We could have had an even clearer two-way loyalty clause. Ingolf Pernice had argued for the revision of Article 10 EC in this same sense with the full force of his power<sup>(28)</sup>. A general 'solidarity clause' in the sense in which I have used it before might have featured as part of this loyalty clause. But I hasten to say that this is not to undermine any conclusion that in the round solidarity is adequately provided for, albeit in piecemeal fashion.

This brings us back full circle to Article 2 of the draft Constitution. It is instructive to examine its current parallel in Article 6 of the Treaty on European Union (TEU) in the light also of the Commission communication of 15 October 2003. It has been said that Article 6 is truly foundational and bears witness to the particular constitutional dynamics that sustain the European Union legal system and area, for as no other it sets out the 'common constitutional principles

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<sup>(28)</sup> Ingolf Pernice, 'Rethinking the methods of dividing and controlling the competencies of the European Union', in *Europe 2004 Le grand debat: Setting the agenda and outlining the options*, proceedings of a conference held in Brussels, 15 and 16 October 2001, p. 96.



that make the relationship of loyalty in the EU work and how they are to be given content' <sup>(29)</sup>. Indeed liberty, human rights, and the rule of law are open-ended categories that can be interpreted in a variety of ways, even in the Member States. What is to make (and keep) them 'common' is the dialogue of constitutional cultures and traditions. The Constitution itself cannot and does not do that any more than the Treaties did. The process of giving them content must be horizontal and discursive. Shared values are the basis for the dialogue and vice-versa, and there is to be no 'copying', but rather a reinvention of them in the European context. At the same time, I argue, this reinvention must take place in the context of relations with one's neighbours. Equally, there is no a priori content to solidarity, or its particular manifestations at this level. But it is clear that the obligation to respect national identities has legal significance even if its utility in a court of law may be limited. It may be non-'justiciable' as a self-standing provision, yet the European Court of Justice has certainly used it as an interpretative device. It has coloured the Court's approach to Article 30 of the EC Treaty, for example. It is clear that national peculiarities, whether constitutional, political, economic, religious, cultural, etc. form part of 'national identities' of the Member States and must be respected. This means that Article 6(1) – and equally Article 2(1) of the draft Constitution – does not call for a single standard, but the decentred, horizontal definition of constitutional fundamentals that allows for and fosters difference both in their definition and in their application <sup>(30)</sup>. The Commission itself reads Article 6(1)'s enumeration of the common 'principles' ('values' in the draft Constitution) as putting the person at the very centre of the European integration project, and as constituting a 'hard core' of 'defining features' in which every citizen of the Union can recognise himself irrespective of the political or cultural differences linked to national identity. Of course, the Member States, by definition, share common values, and the Union has full right to seek to define the core values of the peoples of Europe. Of course, believing in them the Union will take them on its travels. The Barcelona Declaration also speaks of shared values, but currently speaks of respect for the 'values particular to each partner'. If the Constitution now makes it clear that the partnership is to operate on a principle of common universal values, it would be diplomatic but also significantly timely to project also that we recognise that our own appreciation of our values and their concrete implications must suffer the test of interaction every day of the week even in our 'internal' interactions; it is their ability to withstand the gravest tests that makes them 'values', but no one would deny that their 'content' is subtly refined by interaction.

I should add that the Commission also sees Article 7 TEU and Article 309 EC Treaty as providing for the 'enforcement' of these principles. Article 13 EC Treaty, added by the Amsterdam Treaty, gives the Community competence in the field of non-discrimination (human rights competence). Therefore, while it has been said above that horizontal dialogue has lain at the basis for the evolution of the relevant Community or Union values, the Treaties have also vested definitional (albeit contingent on confirmation by the European Court of Justice) and implementation and enforcement power in the institutions. The thing to ensure is that this does not take away, especially with the use of majority voting, anything of the element of dialogue, or invert the emphasis on 'bottom-up' discursive elaboration. It is vital that we project this same philosophy outwards in our relations with our neighbours. We must not 'skip over' the 'dialogical' process in seeking to ensure the development of democracy and the enhancement of respect for human rights.

Let us bear in mind that the objectives of the Treaty are the overriding point of reference as far as the Treaties and the draft Constitution, and therefore the institutions, are concerned. The point is that hitherto the Union 'order' has evolved on the basis initially mainly of unanimity, and later increasingly by 'consent' to the majority position, a consent secured by the practice of dialogue and solidarity.

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<sup>(29)</sup> I elaborate somewhat here on key ideas expressed by Verhoeven, cit. pp. 324 and 325.

It is important, then, to get an overall sense of how the horizontal 'dialogical' element leading to a solidarity approach — which minimises the risk of conflict between Union and the single Member State — is reflected in the draft Constitution in some key areas. I will also refer to the neighbourhood policy, a policy that similarly ought, it is submitted, to be based on maximum cohesion with whatever differentiation is necessary. Indeed, the ultimate aim has been set as 'everything but the institutions' while differentiation coupled with assistance is an essential practical and principled (solidarity) correlative. It is here suggested that the instruments of dialogue and of solidarity via differentiation and assistance that were developed in the Treaties find their reflection, with some improvement, in the draft Constitution, it being assumed that the Commission will be playing its customary role, indeed aiding and being aided in this by the Minister for Foreign Affairs when it comes to foreign affairs; the question is whether they can be employed on an analogous basis in the Union's neighbourhood relations. I suggest that they should inspire us to try although the modalities of this will require careful thought.

It was said by De Burca and Scott, writing in 2002, that there was 'an apparent shift in the paradigm of European governance from one of uniformity and harmonisation to one of flexibility and differentiation' <sup>(31)</sup>. This paradigm shift had been particularly marked since the Maastricht Treaty. And as De Witte has recently said, the enlargement process realities meant that 'while asymmetrical relations would no longer be pursued as part of the EU's external relations with central and eastern Europe, they might be put in place as part of its internal Constitution' <sup>(32)</sup>. He was referring to the pressure for more differentiation or flexibility (solidarity) within the proposed Constitution. Can we extrapolate to the Euro-Med process or even the neighbourhood policy, so that we move explicitly to the idea of maximum cohesion around a common core, while allowing for necessary differentiation? And is this best done in a reinforced multilateral scenario rather than a bilateral one based on still vague declarations, and if so with what institutional implications? Furthermore, does it not also make sense to think of the Union's (in the sense of the Union's proposals for) Euro-Med policy or the Union's (in the same sense) neighbourhood policy as an essential aspect of EU policy-making in the round, with 'input about', if not 'input from', the neighbours at all stages of 'internal' EU decision-making?

In the 'internal' Union context, the whole area of enhanced cooperation is fraught with danger and difficulty from the perspective of fragmentation and policy dilution. Many share the view that 'variable geometry' typified by enhanced cooperation, as opposed to other forms of differentiated integration, radically breaks up the legal landscape of the Union into a multitude of parallel units wherein different substantive legal solutions prevail, and that enhanced cooperation can be seen as aiming at furthering the objectives of the Union and at reinforcing the process of integration only if and to the extent it manages to safeguard unity in diversity <sup>(33)</sup>. Enhanced cooperation requires caution because of the temptation to take the easy way out and to capitulate in the face of the difficulty of the task of managing progress in accordance with the core constitutional values of the multi-polity.

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<sup>(31)</sup> De Burca and Scott, 'Introduction', in G. de Burca and J. Scott (eds), *Constitutional change in the EU — From uniformity to flexibility?* (Hart Publishing, 2000), 1.

<sup>(32)</sup> Bruno de Witte, 'Enlargement and the EU Constitution', in Marise Cremona (ed.), *Enlargement of the European Union* (OUP, 2003), pp. 209–211.

<sup>(33)</sup> A. Verhoeven, cit. pp. 277–282.

Nevertheless, as in the EU itself, so also in the Euro-Med context it may be that a similar 'enhanced cooperation mechanism' in the context of a tighter 'cohesion framework' can play a catalytic role. While useful in a south-south context, facilitating enhanced cooperation between Mediterranean States, it might be just as useful in a north-south context, enabling a group of able and willing Mediterranean States and the EU to move the cooperation agenda forward while leaving open the possibility of future participation to the other Mediterranean partners. This could be an important element in the process of multilateralising the Euro-Med partnership process and of maximising cohesion according to the pragmatic realities. However, in my view, since I am calling for maximum cohesion, efforts at full inclusion should come before resort to enhanced cooperation, as in the case of the 'internal' manifestation of enhanced cooperation in the Constitution. The need for mechanisms to maximise cohesion to the maximum extent are clear in areas such as access to the internal market, the fight against terrorism, justice and home affairs issues (especially migration, immigration, the fight against organised crime), democracy and human rights and civil society dialogue, connection of energy, transport, telecoms networks, research, education, health and many more.

## **Part 2 – The Constitution: cohesion and solidarity; some key areas**

In this part, I sketch some key parts of the Constitution with a view to highlighting the approach on maximum cohesion with necessary differentiation. It must be borne in mind that this is the internal Union context, and what now comes is not being presented for sheer duplication in a Euro-Med or any other context, but because, as has been suggested, there are some 'useful ideas' there.

### **A. Fundamental rights and the democratic life of the Union**

Part Two of the draft Constitution both incorporates the Charter on Fundamental Rights into the Constitution and provides for the accession of the Union to the European Convention. But it also seeks to preserve the 'bottom-up' element to the evolution of the concepts and modalities of human and fundamental rights. While we can speculate how the respective provisions will operate in practice, let us say that one of the requirements is that full account will be taken, and respect given, to the respective constitutional traditions of the Member States, as they 'result' and perhaps have resulted in human rights protection. Closely entwined with this are the provisions in the draft Constitution on the democratic life of the Union<sup>(24)</sup>. Article I-45(3) stipulates that every citizen has the right to participate in the democratic life of the Union and that decisions shall be taken as openly as possible and as closely as possible to the citizen; by Article I-46, the Union institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action, and shall maintain an open, transparent and regular dialogue with representative associations and civil society. Article 47 enshrines the principle of autonomous social dialogue. Article 49, on transparency, enshrines the principle of openness in order to promote good governance and to ensure the participation of civil society. Article 51 enshrines respect for churches and philosophical and non-confessional organisations and provides for open, transparent and regular dialogue. These provisions indicate in broad terms the premises of democratic life rooted in effective dialogue, and how the Union itself is seeking to respond ever more fully to these demands.

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<sup>(24)</sup> Articles I-44 et seq., draft Constitution.

## B. Common foreign and security policy, security and defence

I referred in the first part of this paper to the principle of loyalty. Curtin and Dekker<sup>(35)</sup> are among those who hold that 'the principle of loyalty is evolving into a general principle of Union law'; this, they say, is underscored by the normative provisions of the Treaty on European Union itself and its 'legal practices'; they cite the example of Article 11(2) TEU that requires the Member States to support the Union's external and security policy 'in a spirit of loyalty and mutual cooperation'. And again the Member States have agreed to 'refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations'. Articles 39 to 42 spell things out regarding the CFSP (as Chapter II of Title V). Chapter III is on enhanced cooperation. Article 39(1) speaks of a CFSP based on the development of mutual political solidarity among Member States, the identification of questions of general interest, and the achievement of an ever-increasing degree of convergence of Member States' actions. Decisions are to be adopted by the European Council and the Council of Ministers, by unanimity except in the cases referred to in Part III or where a unanimous decision permits a qualified majority vote. According to Article 39(5), on any specific issue and before taking unilateral action, Member States shall consult the others within the European Council or the Council of Ministers and 'they shall ensure, through convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity'.

However, as I pointed out in Part 1, the principle of loyalty has been developing as a two-way principle. Member States have always been free to exclude themselves from CFSP initiatives insofar as their neutrality or their 'special situation' so dictated on their part. The draft Constitution also binds the Member States towards the Union, while containing a counterbalancing clear provision in favour of 'special features'. Article 5 (the loyalty clause) is supplemented by the specific Article 15 titled 'The common foreign and security policy'; this provides in para. 1 that the Union's competence shall cover all areas including defence; and in para. 2 that Member States shall actively and unreservedly support the Union's CFSP in a spirit of loyalty and mutual solidarity and shall comply with the acts adopted by the Union in this area. 'They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness'. In principle, Member States must 'support', and do so actively and unreservedly. In short, it is not obvious how the mutual solidarity is expected to work as a two-way street once a core decision has been taken; the phrase 'mutual solidarity' figures in the context of the giving of support and implies a mutuality as between the States, all bound to support the Union's policy. But Article 40(2) does repeat, in the context of security and defence, the safeguard enshrined in the current Treaty on European Union, namely 'The policy of the Union ... shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the NATO under the North Atlantic Treaty'.

Article 40(5)(6)(7) refers to variants of enhanced cooperation, variously called the 'entrusting of a task to a group', 'structured cooperation', and 'closer cooperation'. More detail is to be found in Chapter 2, Part III, and it might be useful to compare Chapter 2, Part I, with Chapter 2, Part III. Suffice to point out here that it is only in relation to the first variant that a decision of the Council is needed. As to the others, these are constituted by adoption of the Constitution<sup>(36)</sup>.

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<sup>(35)</sup> D. Curtin and I. Dekker, 'The constitutional structure of the European Union: some reflections on vertical unity-in-diversity', Chapter 4, in Beaumont, Lyons and Walker (eds), *Convergence and divergence in European public law* (Hart Publishing, 2002), pp. 59–71.

<sup>(36)</sup> See Articles 211, 213 and 214 of the draft Constitution.

Article 41 provides for approximation of laws in the 'security' area as part of the implementation of an area of freedom, security and justice (cross-referring to Part III for the relevant 'areas'). Then Article 42 purports to be a 'solidarity clause'. This is a specific clause providing that the Union and the Member States shall act jointly, in a spirit of solidarity, if a Member State is the victim of terrorist attack or natural or man-made disaster. The detailed implementation of this is governed by Part III, Article 231, which provides *inter alia* that, should a Member State fall victim to a terrorist attack, etc., 'the other Member States shall assist it ... to that end, the Member States shall coordinate between themselves in the Council of Ministers'.

Otherwise, Part III, Chapter 2, spells out the mode of definition and implementation of the CFSP. Article 198(5) is surely intended to maintain cohesion by taking into account the particular circumstances of any one Member State; it provides that should there be any major difficulties in implementing a European decision ... a Member State shall refer them to the Council of Ministers which shall discuss them and seek appropriate solutions ... such solutions shall not run counter to the objectives of the action or impair its effectiveness'. Otherwise again we hear of the obligation on the Member States to support, to work together to enhance and develop mutual solidarity, to refrain from contrary action, and so on.

Of course, it is true that European decisions in CFSP must as a rule be taken by unanimity, as per Article 201. This explains much, but not all. For abstentions shall not prevent the adoption of such decisions, and it is therefore provided – in provisions kindred to the current Treaty – that, when abstaining, any member may qualify its abstention by making a formal declaration. The effect is for that State not to be committed to 'apply' the European decision, but it must accept that it commits the Union, and, in a spirit of mutual solidarity, that State must refrain from any action likely to conflict with or impede the Union action based on that decision. By the same token, 'the other Member States shall respect its position'. If qualified abstentions are lodged by one third of the Member States representing at least one third of the population of the Union, the decision shall not be adopted. Article 201(2), while laying down the rule of qualified-majority voting for implementation decisions, nevertheless provides for consultation between a Member State and the Minister for Foreign Affairs with a view to finding a solution where such a State opposes the adoption of a European decision for 'vital and stated reasons of national policy'; it further provides that if this process should fail, the Council may, acting by qualified majority, request that the matter be referred to the European Council for decision by unanimity. Here diversity is acknowledged, and a procedure initiated with a view to addressing a Member State's objections to a proposed decision, and in default to remitting the decision to the highest level for a unanimous decision.

Using the Minister for Foreign Affairs as a mediator working in close liaison with the relevant directorate-general sounds like a good idea. The Minister might be able to propose special solidarity measures in the Member State's regard sufficient to offset that State's objections and to win its support for the measure.

Overall then as far as CFSP and the relevant Constitution provisions go, the Member States' loyalty is required, whether or not they will be actively participating in the relevant decisions or their implementation, by virtue of the duty to refrain from obstructing Union action once they have refrained from the use of the veto. But mechanisms for respect for essential and grounded positions, and for solidarity, are built in.

### C. Internal market – Mutual recognition: Article 95(4) EC Treaty and Article III(15) of the draft Constitution

The draft Constitution has moved beyond Article 95 in one important respect. This may be coincidental but the writer had argued for a solidarity process to be spelt out in the Constitution to cater *inter alia* for economic differentiation<sup>(37)</sup>. This idea seems to have been taken on board. Article III-15 in the title on the internal market now expressly provides that:

*'When drawing up its proposals with a view to achieving the objectives set out in Article 14, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain for the establishment of the internal market and it may propose appropriate measures... If these measures take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the internal market.'*

It is clear that even derogations are possible, as long as they be temporary, while more likely will be the adoption of transitional periods or even the synchronisation of assistance.

This is in my view a near-perfect adoption of the 'maximum cohesion with necessary differentiation' approach. This is solidarity in action. Solidarity is set to operate as a procedural and substantive principle in the course of the decision-making process. According to Article 14, 'the Union shall adopt measures with the aim of establishing the internal market in accordance with ... Article 15'. Clearly, the failure on the part of the Commission to follow Article 15 would amount to the breach of an essential procedural requirement; moreover, any measure adopted without the application of Article 15 would be a failure to observe the principle of solidarity, and the Council acting under Article 14(3) may act only therefore on a compliant proposal of the Commission. Many other examples of solidarity process and principle can be found. I cite, for example, Articles 111-158(2), -160, -167(3), -168(4), -169, all from the area of freedom, security and justice chapter. Article 169, to cite one, provides that:

*'The policies of the Union set out in this section and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the acts of the Union adopted pursuant to this section shall contain appropriate measures to give effect to this principle.'*

Leaving aside the question why this clause could not have been inserted in Part I of the Constitution as part of a general solidarity clause<sup>(38)</sup>, here then is another true 'cohesion with solidarity' clause, for it maximises cohesion by going beyond permitting necessary differentiation to contributing to annulling the need to differentiate in terms of application and effect of the policy.

### D. Choice of instruments

Solidarity, subsidiarity and proportionality all come into play in this area. Indeed, subsidiarity and proportionality operate as solidarity tools. The Constitution should be judged also according [to how] it respects the autonomy of the Member States in areas best left to them. This is a

<sup>(37)</sup> P. G. Xuereb, 'Solidarity and constitutionalism: towards a solidarity model', cit. note 20.

<sup>(38)</sup> It is true that, in some cases, the burden of full cohesion might be too much to ask the better equipped members to bear, but suitable wording could have made it clear that, in such cases, necessary differentiation would come into play – as in the case of the internal market provisions cited above.

manifestation of solidarity. Hard law will be appropriate in many cases (and in some the use of Union 'laws' and in others of 'framework laws' will be appropriate), just as soft law methods of cooperation or coordination will be appropriate in many others. Does the draft Constitution avoid the trap of pre-judging the question as to which instrument is best employed in the circumstances of each case, thus maximising the scope for the play of subsidiarity and proportionality as tools of solidarity? Or has the Constitution adopted efficiency as the sole criterion when choosing the appropriate legislative instrument for action at Union level <sup>(39)</sup>? I think that the Constitution has avoided the trap.

Article 37, the governing provision, to be found in Part I, Title V, on the exercise of Union competence, provides that:

*'Unless the Constitution contains a specific stipulation, the institutions shall decide, in compliance with the provisions applicable, the type of act to be adopted in each case, in accordance with the principle of proportionality as set out in Article 9.'*

The case-by-case approach and the specific reference to the principle of proportionality (subsidiarity is taken as read) demonstrate an 'effectiveness in solidarity' approach. But the proviso, making a saving for where the Constitution contains a specific stipulation, indicates that an article-by-article analysis is necessary.

## E. Conclusion to Part 2

The above is not a fully comprehensive review of 'cohesion with solidarity' under the draft Constitution but a quick survey of some key areas. Nor can these provisions, and their general context of a Union Treaty, be simply transposed to the area of neighbour relations. But perhaps we can take forward the thought that this *modus vivendi sive operandi* is a fruitful source from which to extract principles and mechanisms to underlie our common project with our neighbours on as concrete a basis as can be designed to meet our partners' expectations wherever possible, by doing with them as we do among ourselves.

## Part 3 – The Euro-Mediterranean partnership and the neighbourhood policy

In the third part of the paper, I ask, on the basis of the principle of 'do with others as you do among yourselves', what the Constitution's point of departure on this score is, and what can be made of what the Constitution provides.

Article I-3(4), setting out one of the objectives of the Union, reads as follows:

*'In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the UN Charter.'*

Remember that this objective, like all others, shall be pursued by 'appropriate means' according to para. 5. I will highlight here the reference to solidarity, and also the use of the phrase 'uphold and promote its values and interests'. There have been many warnings, and of different kinds,

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<sup>(39)</sup> As advocated by K. Lenaerts and M. Desomer, 'Bricks for a Constitutional Treaty of the European Union', (2002) 27, *E. L. Rev.*, pp. 377–405, who, however, recognise that flexibility should be built in, leaving options open, even where the Constitution makes an *ex ante* choice in terms of bias in favour of any particular use of instrument in any particular area.

against the temptation to seek to 'cut corners' and to seek to 'impose' whatever values we hold<sup>(40)</sup>, especially if we seem to be doing it entirely in 'our interests'.

Then Article 56, in Part I of the draft Constitution, speaks of 'The Union and its immediate environment'. It is the principal constitutional empowering provision<sup>(41)</sup>. It provides that the Union shall develop a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation. The reader will have noted that the special relationship is to be founded on the Union's values. It was argued above that Article 2 does not expressly call solidarity a value, but that so it surely is. Indeed it is expressed to be a value in the Preamble to Part II of the draft Constitution. A distinction has been drawn by Loenarts and Desomer, as explaining this 'separation' of 'values' in Article 2, otherwise titled 'the values of the Union'. They wrote that the values of the Union comprise not only 'legal' values like the principles of liberty, democracy, respect for human rights and fundamental freedoms, but also 'programmatic' values like solidarity between the peoples and the Member States. Also, as I said above, the constitutionalisation of the basic Treaties of the Union will not mean that the process of 'shaping' and applying the common values is henceforth to be 'top-down', for the 'content' is bound to be re-evaluated (refined) to reflect the new Union of 25. As Loenarts and Desomer put it, the Constitution 'will continue to be the expression of an integration process'<sup>(42)</sup>. The question is whether the Union can project itself as being equally open to such a process with its neighbours, while on the other hand considering ways of solidifying and deepening the process so that we actually have a principled strategy and objectives 'with means coordinated towards ends – not a vague "dimension" or a diffuse "process"'<sup>(43)</sup>.

I would say also that by Article 56 a neighbourhood factor is clearly implied even for the 'internal' Union processes of decision-making; for Article 56 forms part of the Treaty as a whole and in my view demands that internal decision-making be 'outward-looking' as much as 'inward-looking'<sup>(44)</sup>. In the 'melting pot' of coherent policy-making, to the national polities of the Member States, is now added consideration of the national polities at least of the neighbouring States, as were those of the EFTA States party to the EEA Agreement. The Union's responsibilities in the wider world dictate, in my view, that even more than before the 'European Union project' itself be viewed by us in the Union in its two dimensions, internal and external. We cannot succeed internally while failing externally. It follows that cohesion with solidarity cannot be purely internal, but must also be external, in particular vis-à-vis the Union's neighbours. The success of the Union's 'internal' project in reality depends on a multi-polity dialogue that goes beyond that between the Member States alone.

This reality and the commitment enshrined in Article 56 have implications for the European institutions themselves. These must be equipped to properly address the dual internal and external dimension in the round, and this approach should cause us in the Union to look more closely also at ourselves. Indeed we can only convince others of our goodwill and of the validity of working with us if we are prepared to be honest about our failings as well as our virtues.

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<sup>(40)</sup> See, for example, EuroMesCo Briefs, December 2003, 'Democracy and the EMP: European and Arab perspectives', by Richard Gillespie and Richard Youngs.

<sup>(41)</sup> See, for a detailed analysis of this provision, E. Lannon and P. Van Elsuwege, 'The EU's emerging neighbourhood policy and its potential impact on the Euro-Mediterranean partnership', in Peter G. Xuereb (ed.), *Euro-Med integration and the ring of friends – The Mediterranean's European challenge*, Vol. IV, (EDRC, 2003), pp. 21–85.

<sup>(42)</sup> Cit. p. 379.

<sup>(43)</sup> 'Partners and neighbours: a CFSP for a wider Europe', Chaillot Papers No 64, September 2003, p. 127.

<sup>(44)</sup> This was certainly well recognised in the various Convention working groups, as in the Dehaene Group, but in several others also.



The EEA offered a model for relations with a non-member group of States, but it is not a perfect model and is seen as deficient even by those non-member EEA States who have acceded to it – not least for the lack of fuller institutional/processual involvement on their part. Institutionalising the Euro-Mediterranean partnership, or even the neighbourhood relationship, may be a step, even a first step, but the next or even contemporaneous one should be the closest communication (not to say linkage) between such institutional structures and the European institutions. A possible future (some might say futuristic) scenario might even provide for new overarching institutions.

However, the main point of this section of the paper is to emphasise first and foremost the need to establish the 'dialogical' process required to successfully define and pursue common objectives and to establish priorities and concrete measures on the basis of common values. The process of building a relationship that goes beyond the strictest interpretation of the wording of Article 56 – i.e. beyond good neighbourliness – to include the common ownership of a common project – likewise founded on shared values – will only work in the end if there is true dialogue.

Cohesion is the key objective and loyalty and solidarity are the key values. And the question then is whether the 'internal' mechanisms of loyalty and solidarity can inspire the mechanisms also of this 'common project' – the common project being defined as the project of securing peace and prosperity on the basis of shared values through the pursuit of common policies and cooperation in the Euro-Mediterranean (and pan-Euro-Med) area. Can we imagine a common project loyalty clause? A solidarity clause or clauses? A values clause? Detailed objectives and policy clauses? Enhanced cooperation mechanisms? A body performing the role of the Commission but for the common project? Conditionality and progressivity provision? In an updated Barcelona Declaration or a framework neighbourhood treaty that also spells out more clearly the common project and the parties' commitments?

In all this we must guard against paternalism and judgmentalism. My intention is quite the opposite. What I say is that all that we do with our neighbours should reflect the spirit of our Constitution and the spirit of our heritage. After all, as within the Union, the underlying imperative ultimately is the common ownership, interpretation and application of a Euro-Med *acquis* or a 'neighbourhood *acquis*', and let us be clear that this means unity in diversity – not uniformity. To rely exclusively on a rigorous principle of conditionality in such a manner as to give the impression of paternalism<sup>(45)</sup> does not go down well even among civil society in our neighbours. Indeed it can be exploited. Similarly, it does no good to present a false picture of uniformity within the Union as opposed to a real picture of unity in diversity; such a false picture can also be exploited detrimentally by the enemies of dialogue. At the same time, this does not mean denying our historical and contemporary view of the world and the position of the individual within it. We should not deny our heritage. Others will respect us the more if we do not. But we should be truly faithful to our heritage and also explain that it is this same heritage that impels us to continually question even among ourselves how we should offer legal guarantees of tolerance; how to recognise and protect freedoms and rights when this might carry the risk of excess or abuse of freedom; just how far to rely therefore on a secular model for the organisation of society with the attendant risk that our moral and religious values are obscured to the point of apparent disappearance or appear to have been sidelined by us not only to our brothers in the Muslim world but equally so to our own children. Freedom from religion can lead

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<sup>(45)</sup> See E. Lannon, K. Inglis and T. Haenebalcke, 'The many faces of EU conditionality in pan-Euro-Mediterranean relations', in M. Maresceau and E. Lannon, cit. pp. 97–138.

us all down a very different path than freedom of religion <sup>(46)</sup>. Let us get the message across that we consider ourselves to be in a state of permanent evolution, still learning how best to put our values into practice, constantly striving to restrain any excesses (e.g. of capitalism itself) and to correct any imbalances between freedom and libertarianism; and then look to our neighbours to join us in partnership in a similar spirit.

### *The place of conditionality*

The Commission has proposed that any offers of actual benefits and preferential treatment be made conditional on partner countries' 'progress towards political and economic reform'. An updated, even upgraded, Barcelona Declaration might use the language of presumed access rather than of 'offers'. But conditionality is what secures a balanced development of all three *volets* (which might even be reformulated to better reflect the balance sought).

The Commission statement cited above is an explicit statement of conditionality/progressivity in the context of the neighbourhood policy. But conditionality of all kinds, entailing the possibility of sanction, or making cooperation/assistance dependent on progress by a partner is a strong feature in the text of the Barcelona Declaration, and of the association agreements and of the MEDA regulation itself <sup>(47)</sup>. However, pragmatism is and will be the rule regarding conditionality, it has been said <sup>(48)</sup>. The European Parliament has often called for a principled approach and the implementation of the 'essential element' clauses in the association agreements by the Council. Lannon et al. argued in 2001 that 'there is ... a need for a more consistent approach. It seems hypocritical that the EU, still suffering its own democratic deficit, imposes, in its relations with third countries, the obligation to respect commitments that the EU or its Member States are still unable or unwilling to undertake' <sup>(49)</sup>. Harsh words, and surely the new Constitution makes considerable amends on any such score. It is argued here that, reading Article 56 as applying in the Euro-Med context, the position of the Union is considerably clarified. The Union is now explicitly projecting its own values, seen as universal <sup>(50)</sup>. The Union now feels strong enough to do so, or has seen sufficient convergence to be able to do so. Applying this to the Barcelona process, the common project is even more clearly one, and the three *volets* one package. This would be good news for political as well as economic progress, the two being, however, interconnected, but causes us to underscore the importance of the fullest dialogue between cultures to ensure that mutual understanding never falters. It is this crucial aspect that I now emphasise, as playing a vital role in the application of the Union model of maximum cohesion with solidarity.

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<sup>(46)</sup> See on the subject of interreligious dialogue: Albert Guigi, 'Le dialogue interreligieux entre défis et réalités'; Rostane Mehdi, 'Le dialogue interreligieux, Rapport introductif'; Tariq Ramadan, 'Entre les religions: franc dialogue, question sensible', all on the intercultural dialogue website of the European Commission, <http://www.ecsanet.org/dialogue/contributions>; and the Comece website, [www.comece.org](http://www.comece.org), especially on the recently concluded conference of the Catholic bishops on the theme of 'European Union – Hope and responsibility' (21 and 23 April 2004).

<sup>(47)</sup> See, for example, Lannon, Inglis and Haenenbalcke, cit. note 37.

<sup>(48)</sup> Ibid. p. 129.

<sup>(49)</sup> Ibid. p. 132.

<sup>(50)</sup> As counter, apparently, to the words in Article 2 of the Barcelona Declaration to the effect that the partnership was entered with due regard for 'the characteristics, values and distinguishing features peculiar to each of the participants'.

## 1. THE COMMISSION'S VISION

We can take our cue from the Commission document preparing the VIth Meeting of Euro-Med Ministers for Foreign Affairs in Naples in December 2003 (Barcelona VI) <sup>(51)</sup>. The introduction put the focus on solidarity, the key value, to be pursued via dialogue and cooperation. Recommendation No 1 asked the Ministers to reaffirm their commitment to the Barcelona process as 'the framework for cooperation to ensure solidarity between the EU and its southern neighbours to promote political and economic reform for security and stability'. The Ministers were invited by the Commission to review progress on the neighbourhood policy to see how this policy might strengthen cooperation by building on the Barcelona process *acquis*. Key phrases in the context of ESDP include 'dialogue' (including at expert level), 'participation' and 'gradual involvement' of the Mediterranean partners <sup>(52)</sup>. On human rights and democracy, 'dialogue' is to lead to 'agreed joint action plans' setting out 'the means to implement effectively the commitments which the partners have agreed to at international level through national regulation and legislation' (with financial support under MEDA). Crucially, impetus was given to the setting-up of the Euro-Mediterranean Parliamentary Assembly, envisaged as operating as a consultative body, feeding into the decision-making in the Conference of Ministers and the Euro-Med Committee. On the economic front, developments in free trade in general were reported as having made slow progress, but the Commission has clearly taken on board in principle the vital importance of agricultural exports to the region's development; moreover, it highlighted the regional approach adopted by the Conference of Trade Ministers in Palermo, whereby in the field of trade in services a framework protocol should be agreed between the partners as a basis for entering into bilateral negotiations. The task of the framework protocol common to all Mediterranean countries is to serve as a basis to ensure coherence. Palermo was also key in launching a new initiative on the approximation of legislation to heighten convergence with regulations and standards in the EU internal market. This is crucial to establishing the free-trade area, yet is so demanding of a solidarity approach leading to maximum cohesion with necessary differentiation. Progress was also highlighted in the implementation of the regional programme covering the justice, police and migration sectors, so that for the first time in the framework of the partnership, experts and practitioners from the Euro-Med countries would be working together in judicial cooperation, in the fight against terrorism, drugs and organised crime, and in a wide dialogue and joint approach to migration. It is the idea of the framework protocol for the purpose of regulating trade in services, and the example which it and other similar initiatives set, against a broader need to update the framework and bring the many developments together, that lead to the following point.

Perhaps we can enlarge on the many achievements of recent years and months to begin work on the drafting of a 'framework treaty' – an overarching treaty setting out in more detail than hitherto the objectives, essential values, main institutions, policies and principles of the (pan-) Euro-Med area. Perhaps the Euro-Med institutions could be developed into institutions that are better able to operate the principle of maximum cohesion with necessary differentiation in solidarity, building on the ones proposed by the Euro-Med Ministers in Naples and those current across association agreements, etc. However, noting that Euro-Med 'Charters' on this or that are proliferating in the context of a determination in any event to widen and deepen cooperation to the point of closest possible integration in many areas, then, since all or practically all policy areas are proposed to be covered, such an approach would lead to greater cohesion within a reinforced multilateral framework while providing for 'nuance in pace and coverage', to be provided – in the absence of new forms of institutional decision-making – by bilateral agree-

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<sup>(51)</sup> COM(2003) 610 final of 15.10.2003.

<sup>(52)</sup> See Recommendation No 3, p. 11.

ments or 'country action plans' concluded within the terms of the framework treaty. What I envisage is a general approach based on what many are calling for in specific areas; for example, for a model agreement on the implementation of human rights and democratic principles <sup>(53)</sup>.

As I argue, in my view the time is now, a time of the historic adoption of a Union Constitution in the general context of global and regional developments, to extrapolate from this and other calls, to seek to place the Barcelona process on a surer footing with the main purpose of ensuring the processes of dialogue and two-way loyalty and solidarity around more closely articulated goals and commitments.

In Naples, then, the Ministers sent out a message of common interests, shared values and solidarity among Euro-Mediterranean partners; they declared that furthering the process of dialogue and cooperation in order to improve mutual understanding is essential; that the 'greater demand for Europe' on the southern and eastern rim of the Mediterranean calls for a reinvigorated and renewed partnership, based on the stronger commitment both of the European Union and the Mediterranean countries to common values and objectives; and, recalling that the Valencia action plan of 2002 is the most recent comprehensive set of commitments, supported the idea of engaging in a thorough, open and sincere discussion within existing bodies of the Euro-Med partnership on how best to carry into effect the Barcelona *acquis*, aiming to improve the contribution by the Mediterranean partners to the outline of policies and their relevant implementation <sup>(54)</sup>. Moving the focus of the partnership further into the domain of civil society is seen as vital, as of course it is <sup>(55)</sup>. As to the 'Wider Europe – New neighbourhood' initiative, the Ministers discussed how this policy might strengthen cooperation 'by building on the existing Barcelona process *acquis*'; they noted that the policy aims to support reforms as well as regulatory and legislative approximation, particularly as regards the internal market, between the EU and the Mediterranean partners, as they are ready to engage in such intensified cooperation; but that from the global perspective of political and economic reform 'one of the aspects of these new policies is to reinforce the Euro-Med partnership in all its chapters as well as the joint ownership of this process with a view to fostering stability, development and democracy in the countries to the south, in the common interest' <sup>(56)</sup>.

In any case, it surely is foreseeable that the Euro-Med process and the neighbourhood policy will gradually come together around a core framework setting out principles, common policies, actions, rights and obligations. The Commission saw the 'Wider Europe' national action plans as constituting a catalyst for a more dynamic and ambitious Barcelona process agenda. It described the partnership as having the common goal of a stable, more prosperous southern Mediterranean in close, positive interdependence with Europe. I would argue that we can and should begin to think about setting out our common goals, values, policies and principles, in more detail than set out in the Barcelona Declaration itself, whether in an inclusive neighbourhood context, or in a (less overarching) regional Euro-Med context, in a framework treaty.

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<sup>(53)</sup> R. Pace, S. Stavrides and D. Xenakis, 'Parliaments and civil society cooperation in the Euro-Mediterranean partnership', *Mediterranean Quarterly*, Vol.15, winter 2004, pp. 74–92, p. 87.

<sup>(54)</sup> Presidency conclusions, Euro-Mediterranean Conference of Ministers for Foreign Affairs, Naples, 2–3 December 2003, paras 2–4.

<sup>(55)</sup> *Ibid.* para. 6.

<sup>(56)</sup> *Ibid.* para. 7.

## 2. INSTITUTIONAL QUESTIONS AND CIVIL SOCIETY: THE COMITÉ DES SAGES

An important question is whether new institutions are required to better serve the purpose of implementing the value of solidarity in an enterprise of advancing cohesion. A report to the European Parliament had shown itself predisposed to this idea, advocating a strong institutional framework and a series of common policies<sup>(57)</sup>. The main overarching Euro-Med institutions are the Ministers' Conference, the Euro-Med Committee and the Euro-Med Parliamentary Forum, now the Assembly<sup>(58)</sup>. Surely, these institutions have operated and will continue to operate on the principles of equality, co-responsibility and solidarity. Having regard to the nature of the Barcelona process, it was foreseen that the Parliamentary Assembly would be open to participation on a voluntary basis, would adopt proposals by consensus, and its decisions would not be legally binding<sup>(59)</sup>; however, it would feed into the Ministers' Conference, being able to deliver opinions in response to requests from that conference and being consulted on the major aspects of, and fundamental choices for, each of the three strands of the Barcelona process. It would also have a crucial role in monitoring the application of Euro-Mediterranean association agreements.

3. IN THEIR REPORT OF 2003 TITLED 'DIALOGUE BETWEEN THE PEOPLES AND CULTURES IN THE EURO-MEDITERRANEAN AREA'<sup>(60)</sup>, THE HIGH-LEVEL ADVISORY GROUP ESTABLISHED ON THE INITIATIVE OF COMMISSION PRESIDENT ROMANO PRODI HAD MUCH TO SAY ON THESE LINES. I HAVE ALREADY SAID THAT I ENVISAGE THE PRINCIPLES BEING APPLIED MORE WIDELY IN THE CONTEXT OF THE NEIGHBOURHOOD POLICY, BUT IT BEARS EMPHASISING THEIR FINDINGS FOR THE EURO-MED AREA ITSELF. IN WHAT FOLLOWS I QUOTE LIBERALLY FROM THE REPORT, A MAIN FOCUS OF WHICH IS THE DEVELOPMENT OF THE CIVIL SOCIETY DIMENSION.

'Dialogue between peoples and cultures can no longer be ... the "poor relation" of the Barcelona process, but must extend beyond the bounds of its specific areas of action to become a cross-cutting element, informing all aspects of Euro-Med relations with its "common civility". This role must be built on solid ground; it cannot be taken for granted, as is shown very clearly by the organisation and operation of the association agreements between the Union and each of its Mediterranean partners.' These agreements, administered by an inter-State Association Council and Committee and by discussion based on unanimous agreement between government representatives (with no automatic provision for setting up joint parliamentary committees) leave little room for consultation and especially for consultation of interest groups (infra-State bodies, socioeconomic actors and so on) which, both in the north and in the south, should play a central role... How is it possible, in these circumstances, to imagine that this relationship could cement the mutual awareness and understanding that we seek?... Clearly, another approach and another method is required.' A civil society approach is vital. Linkages between civil society and institutions are also vital. The Comité des Sages here adds to this: 'The equality that cultural ties spontaneously express – and of which culture is the natural preserve – must rapidly

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<sup>(57)</sup> See draft report on 'Wider Europe – Neighbourhood: A new framework for relations with our eastern and southern neighbours', C5-0110/2003, 25 September 2003. See E. Lannon and P. Van Elsuwege, 'The EU's emerging neighbourhood policy and its potential impact on the Euro-Mediterranean partnership', in Peter G. Xuereb, *Euro-Med integration and the ring of friends*, (EDRC, 2003), pp. 21–84.

<sup>(58)</sup> See annexed recommendation on the setting-up of a Euro-Med Parliamentary Assembly from the Euro-Med Parliamentary Forum to the Naples Euro-Med Ministerial Conference, Naples, 2 December 2003.

<sup>(59)</sup> See recommendation from the Euro-Med Parliamentary Forum to the Sixth Euro-Med Ministerial Conference on the setting-up of a Euro-Med Parliamentary Assembly.

<sup>(60)</sup> *Euromed Report*, Issue No 68, 2 December 2003. The report is on the web at: [http://europa.eu.int/comm/external\\_relations/euromed/publication.htm](http://europa.eu.int/comm/external_relations/euromed/publication.htm).

become visible in all aspects of the Euro-Mediterranean neighbourhood relationship. Shared institutions such as the Euro-Med Foundation may rapidly, in the short and long term, respond to this aspiration turned requirement... It is such proposals, based on the common Euro-Mediterranean interest, that will forge the notion of a common future, and, by extension, a necessary solidarity, itself rooted in an ever deeper awareness of peoples and cultures.' These fundamental principles (respect, equality at all levels, freedom of conscience, solidarity – where societies in the south have a pre-eminent role in "proposing", and knowledge or an ever deeper awareness) – which might possibly be enshrined in a charter – must provide active support to all those – from heads of State to local associations or groups of citizens, parliamentary assemblies, trade unions, non-governmental associations – responsible for building the Euro-Med area.' They then proceed to outline five principles of action: equity, co-ownership, transversality, cross-fertilisation, and cooperation.

What was their view of the institutional future? As they saw it there was an imperative need for a joint institutional structure: 'If we are to instil a sense of individual or shared responsibility among all decision-makers and actors, it is imperative that the fundamental principles be protected and relayed not only by translating them into these operational principles, which serve as a guide to action, but also by establishing a joint institutional system where powers and counter-powers would counterbalance each other effectively. Until such a system is established, the Euro-Mediterranean Foundation will be the only joint institutional forum – and link – in which to turn the desirable into the feasible.' The Euro-Med Council and the association councils and committees are not adequate to protect, relay, or ensure the correct "balance of powers and responsibilities". And they recalled that the EU itself saw fit to set up a European Parliament, a European Commission and a Court of Justice, a Committee of the Regions and an Economic and Social Committee. They argued that 'while simple replication is not (or might not be) the solution, there are clearly some useful ideas here <sup>(61)</sup>, as they are in the "pathway" by which the institutional apparatus of the European Union has gradually emerged' (with emphasis on 'gradually', I concede). As a starting point, then, they saw the 'poor relation' of the Barcelona process, the dialogue between peoples and cultures, placed on an institutional footing, as becoming the bridgehead of future Euro-Med relations, and I add therefore of future joint institutional and management mechanisms. The first institutional structures, as the wise men saw it, would comprise a Euro-Med Council for culture and education, a Euro-Med Parliamentary Assembly with a powerful committee on the dialogue of peoples and cultures, and there would be a Foundation which, together with the Parliamentary Assembly, could draw the partners' attention to violations of the essential principles [I recall that one of these is solidarity] and, with the Council, draw up a programme of priorities, and would have the task of independently assessing cultural programmes and the cultural impact of other measures (such as privatisation, opening up of trade, visa and immigration policy, and prevention of discrimination). Here surely is an expression of the willingness to reassess the way in which we in the Union do things, and to incorporate the lessons of dialogue in the elaboration of policy <sup>(62)</sup>. The actors in civil society, organised along geographical or thematic lines, would have full access to each of these three joint institutions, which either separately or jointly would have a much better perception of the difficulties and concerns of a true dialogue between peoples and cultures and the most effective way to overcome them.'

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<sup>(61)</sup> The reader will now recognise the provenance of this idea.

<sup>(62)</sup> The opening of the European research area to all Mediterranean partners, the Mediterranean component of the EU water initiative, EuMedConnect, the Euro-Med transport project, a new Euro-Med partnership on investment promotion and the Euro-Med Charter for Entrepreneurship may be examples of the synergising of internal and external policies; but is this sufficient common ownership?

The interim report on the 'EU strategic partnership with the Mediterranean' <sup>(63)</sup> declares to be 'shared perspectives', *inter alia*, that the strategy should take account of differentiation and the requirements of individual countries in the region (this is not a case of one size fits all), and that the 'engagement' should be long term and coherent with pragmatic implementation.

It is not arrogant or patronising to offer the EU cohesion with solidarity model (including the institutional model) up for consideration and for an ambitious but open and sensitive 're-presentation' of its own evolution as one that may underpin the approach to wider and deeper relations. The approach of the Comité des Sages is that in moving to a 'balanced partnership' emerging from 'shared institutions' we start from the crucially important Euro-Mediterranean Foundation for the Dialogue of Cultures, and the Euro-Mediterranean Bank, and see fully in place the 'institutional triangle' of a Euro-Med Council (ideally operating in all areas), the Euro-Med Parliamentary Assembly and the Foundation. The fundamental active principle of all decision-making and action, I hope, will be two-way loyalty to common objectives and tasks, ensured by the pursuit of maximum cohesion with necessary differentiation and therefore true loyalty and solidarity based on the fullest dialogue at all 'levels'. I repeat though that in my view:

- we need a new, more detailed, framework, leading to a deeper relationship based on better mutual understanding;
- in that context, we need to keep under review our reliance on conditionality and linkage, while perhaps being more consistent in their use;
- we need structures that emphasise, within the framework, the 'dialogical' and multi-polity processes that secure mutual understanding and solidarity;
- we must put societies, and in particular mutual education, at the heart of our efforts;
- we need ambition on all sides, tempered not by the so-called 'realism' that so often is merely a mask for cynicism, selfishness or apathy but by grounded respect for real differences, and we therefore need institutions and mechanisms and processes that are capable of identifying, emphasising and taking as far as they will go the commonalities that exist, and of 'creating' new commonalities while working on the differences.

As to the next first steps following the creation of the Foundation and its commencement of operation from Alexandria, the dialogue can continue, as I hope, on the lines of maximum cohesion with necessary differentiation, with all seeking to maximise their ability to pursue the same aims in a coordinated and mutually supportive way. Where to start is the matter of this conference: let civil society lead the process, with the support of all actors, public and private that can be mustered. The universities have a crucial role to play, and they need support to play it, and new instruments such as Tempus MEDA will play a key role. Let us identify the crucial cross-cutting themes. I am sure that such themes will emerge from the conference. But civil society needs to be linked to information if it is to develop and be effective in engendering positive change. Universities, properly networked, and linked to civil society have a vital role to play; we would do well to focus on creating such synergies, building on achievements to date.

Ultimately, though, success at the micro-level also depends on having the proper structures and synchronies between institutions and organisations at the macro-level. I have permitted myself to muse about the possible future, with the idea of an update to Barcelona offering clearer

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<sup>(63)</sup> *Euromed Report*, Issue No 73, 23 March 2004.

signals than the Barcelona Declaration and mirroring as far as possible the essential 'internal' cohesion with solidarity approach of the EU Constitution and institutions operating on the basis of shared values and making use of appropriate instruments, while emphasising as of now that the EU's own internal decision-making process must of necessity take full account of the EU's neighbours, that ever closer links must therefore be forged between the institutions of the EU and those of the Euro-Med partnership and/or of any wider neighbourhood structure, and that all partners might consider the proposition that the cohesion/differentiation 'solidarity model' (of maximum cohesion with essential differentiation) of the European Union itself could receive more substantial articulation in regional structures and decision-making. In Naples in December of 2003 <sup>(64)</sup>, the Ministers sent out a message of 'common interests, shared values, and solidarity among Euro-Mediterranean partners' and spoke of a 'greater demand for Europe'. I suggest that the best of the European Union is its cohesion/differentiation solidarity model, including everything in what I have called the common project. As we in the European Union refine our processes and instruments of cohesion and solidarity among ourselves and adopt the constitutive document of the new Union, what greater act of justice, friendship, solidarity and true realism can we perform than to seek to embody the spirit and essence of those processes and instruments as far as human design can imagine in our common project with our 'ring of friends'?

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<sup>(64)</sup> Presidency conclusions, Euro-Mediterranean Conference of Ministers for Foreign Affairs (Naples, 2–3 December 2003), *Euro-Med Report*, 12.12.2003, Issue No 71+.



## **Solidarity under the draft Constitution in and beyond an enlarged European Union – Cohesion with differentiation under two-way solidarity in the pan-Euro-Med area**

### **or The Euro-Mediterranean Foundation for Culture**

**Peter G. Xuereb**, moderator

Univerity of Malta

1. At last, an institution to push through the 'third' *volet* of Barcelona.
2. The need is for a *real* dialogue, capable of measurable results in relation to the real Euro-Med/neighbourhood agenda.
3. We need to be clear about the objectives and the means to those objectives across the range of 'areas of cooperation and integration'. This means specificity about aims, objectives and principles informing the Euro-Med/neighbourhood agenda.
4. The EU institutions and the Euro-Med institutions (ultimately any eventual neighbourhood institutions also) must work towards those aims and objectives in accordance with those principles, as must the partners (EU and neighbour States)
5. A guiding principle for dialogue presents itself (if not the full model of its implementation adopted by the EU itself): namely that of maximum cohesion with necessary differentiation (justified), the one (cohesion/inclusion) maximised and the other minimised (to what is necessary) by the processes and instruments of solidarity.
6. Real dialogue means objective-oriented mutual exchanges geared to identifying the commonalities and the real obstacles, and then finding real solutions, in accordance with the above model, in pursuit of the common objective. This is in essence a functional approach. But it posits intercultural dialogue squarely on a dialogue on values.
7. The Foundation has a vital role to play in all this, directly and as a catalyst for this dialogue. There might be at least two focuses or 'directions of approach'.
8. One focus would be on cross-cutting (horizontal) themes, such as the family, the firm and business ethics, corporate governance, democratic life, religion in the public sphere, women in public life, the media in civic life, the common cultural heritage, etc. The objective is mutual understanding. Outcomes from this focus would feed into the debate in the second area of focus.
9. The second area of focus would be on actual (culturally sensitive) policy areas as they are evolving: employment, social policy, enterprise policy, the four freedoms, cross-border services, cross-border investment, migration and immigration, security, etc. with a view to influencing their evolution.

10. Without ruling out other actions, a main Foundation methodology would be to link 'civil society' (individuals, groups, etc.) (and networks of) and all appropriate actors or cultural agents to (1) the sources of information and forward thinking, primarily networks of universities and research institutes working on the themes and policy areas, and (2) international organisations and institutions at all levels.

11. The Foundation would promote, catalyse and support all initiatives, bearing in mind in particular the 'real dialogue' imperative. One might be to study, under an own project, ways of further (a) elaborating the common project, and (b) institutionalising the processes of cooperation and integration.

12. This own project could be called 'the common destiny project'. It would be carried out, by free movement and interaction of the greatest possible number of participants, over a three-year period, to test:

- (1) the perceived limits of maximum cohesion, by the pursuit of maximum common ground;
- (2) therefore, the real limits of essential 'difference';
- (3) the possibilities of creating inventive mechanisms for managing such a difference so that common goals can be achieved;
- (4) our ability to overcome the barriers of prejudice, fear, suspicion and distrust.

In principle, participants would be young, say 30 years or under. All CDP participants would enjoy freedom of movement. All organisations and institutions accredited to the project would open their doors and their resources, including via paid employment, scholarships or *stages*, to them. They could move, learn and interact with no barriers, as ambassadors of the common destiny project. They would have only one point of reference – the Foundation. All other organisations or institutions would have only one capacity and brief – to assist and support. The Foundation would, in line with point 10 above, coordinate a university/civil society network that would provide the intellectual and practical input into the work orientation of the participant. The CDP itself would be grounded on the two focuses referred to in points 8 and 9 above. The objective of the project would be to further define the larger 'common project' that is in course of formulation by the European Union with its neighbours and to make proposals as to the 'framework', not least institutional, that would make it work. The motto could be 'Finding ways that work'.

[Some key concepts: culture, inter-(cultural), civil society, dialogue, actors, institutions]

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## W O R K S H O P 2

The contribution of women and civil society  
(Women's role in dialogue)

## A T E L I E R 2

L'apport de la femme et la société civile  
(Le rôle de la femme dans le dialogue)

## **M<sup>me</sup> Simone Susskind**

Présidente de «Actions in the Mediterranean»

Dans son rapport «Le dialogue entre les peuples et les cultures dans l'espace euro-méditerranéen», le groupe des Sages, créé à l'initiative du président de la Commission européenne, M. Romano Prodi, a insisté sur le principe d'égalité, dans la diversité, d'égalité dans la participation au dialogue.

Il a aussi mis l'accent, dans ses recommandations aux décideurs politiques et aux acteurs de la société civile, s'agissant de la Fondation euro-méditerranéenne pour la culture, sur l'impérative nécessité de la prise en compte transversale de l'égalité entre les hommes et les femmes à tous les niveaux de son action, précisant que les performances de la Fondation et ses résultats en dépendraient.

Je remercie la direction générale de l'éducation et de la culture de la Commission européenne d'avoir inscrit au programme de cette conférence un atelier consacré à «l'apport de la femme et la société civile».

Les débats dans notre atelier ont été riches et fructueux et nous permettent de formuler des recommandations à plusieurs niveaux.

Avant toute chose, je tiens à remercier particulièrement ma collègue le professeur Teresa Freixes, pour son implication active dans les travaux de notre groupe de travail et pour son aide dans la rédaction des conclusions.

Nous avons beaucoup regretté la faiblesse de la participation d'acteurs de la société civile venus du sud de la Méditerranée à l'atelier et à la conférence en général. Les raisons de cette absence reposent sur les coûts élevés d'un déplacement à Bruxelles et sur les problèmes de mobilité liés bien souvent à l'obtention d'un visa. Cette absence a pesé sur nos débats à tous les niveaux. Nous avons aussi émis le souhait que de telles rencontres, qui ont pour objectif d'approfondir et d'enrichir le dialogue entre les peuples et les cultures, puissent se tenir dans des pays du sud de la Méditerranée, comme la Jordanie et le Maroc.

Il est utile de rappeler ici que les inégalités en termes de droits humains empêchent le progrès de la démocratie et que les femmes, dans le cadre du partenariat euro-méditerranéen, sont confrontées à des discriminations qui affectent de nombreux domaines de leur vie quotidienne, tant au sud de la Méditerranée que dans les pays de l'Union européenne.

Les recommandations de notre atelier ont porté en particulier sur les domaines de l'éducation et sur la nécessité de l'extension du dialogue à tous les niveaux des sociétés concernées.

Des progrès très conséquents ont été réalisés dans le domaine de l'éducation des filles et des femmes du sud de la Méditerranée, et il apparaît clairement qu'un des vecteurs essentiels vers l'égalité hommes/femmes est lié à l'accès aux études non seulement dans l'enseignement primaire, mais aussi à tous les niveaux d'enseignement, y compris l'enseignement universitaire. À ce propos, il nous est apparu utile de mentionner le cas de l'Iran, où 62 % des étudiants dans les universités sont des filles!

Les participant(e)s au groupe de travail ont, par conséquent, chaudement recommandé que les États et les institutions multilatérales concernés investissent massivement et en priorité dans l'éducation des filles.

L'accent a aussi été mis sur la nécessité de favoriser les échanges entre étudiant(e)s et professeurs, entre le Sud et le Nord.

Cela implique, bien entendu, la mise sur pied de nouveaux programmes et de ressources accrues, tout en tirant profit des programmes existants dont il faudrait élargir le cadre et renforcer l'impact, tels que les programmes Erasmus, Jean Monnet, Leonardo, Marie Curie et autres.

Ces interventions sont essentielles pour favoriser la pleine intégration des femmes dans la société civile et au niveau de la décision politique.

Bien souvent, le débat sur l'égalité hommes/femmes se déroule au sein des «élites» et imprègne difficilement des couches plus défavorisées de la population. Les participant(e)s recommandent d'inverser cette dynamique et d'impliquer les femmes à tous les niveaux afin qu'elles puissent participer pleinement à la réflexion et au dialogue tant au sein de leur société que dans le dialogue Nord-Sud et Sud-Sud. Dans ce contexte, l'importance de la prise en compte de bonnes pratiques et la nécessité de mettre sur pied des réseaux appropriés dans le cadre du partenariat euro-méditerranéen ont été mises en évidence. La participation effective des acteurs de la société civile du Sud, et notamment les femmes, doit être favorisée et leur mobilité être assurée dans le cadre du dialogue Nord-Sud. Si ce n'est pas le cas, il deviendra de plus en plus difficile pour les femmes du Sud de participer effectivement à ce dialogue et d'échanger des idées et des expériences avec leurs collègues européennes.

À ce propos, les recommandations du Forum civil euro-méditerranéen de Valence demandant la mise sur pied d'un réseau «EURO-MED Femmes» ont été prises en considération.

L'accès limité des femmes à la prise de décision et leur représentation très modeste dans la vie politique ont été mis en évidence, même si certains progrès ont été accomplis. Les participant(e)s ont recommandé que soient mises en place des actions positives pour soutenir les candidatures de femmes dans les processus électoraux, la formation des gouvernements et les autres niveaux de pouvoir et de décision.

La mise en place d'un mécanisme intermédiaire régional (euro-méditerranéen) dans le domaine d'action des organes d'initiative, de contrôle et de suivi des politiques d'égalité des pays du partenariat (tels que le comité CEDAW – convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes) a été fortement encouragée. Il pourrait s'intituler «EURO-MED Genderwatch».

Le renforcement d'une interaction stable et proactive entre les acteurs de la société civile, et particulièrement les associations de femmes, et les différents niveaux de prise de décision peut contribuer efficacement à faire progresser l'égalité hommes/femmes dans nos sociétés.

Les participant(e)s ont aussi souligné la nécessité d'améliorer les références à l'égalité entre hommes et femmes dans les textes du traité instituant une Constitution pour l'Europe. À cet égard, on a mis l'accent sur le fait que l'égalité entre hommes et femmes doit être incluse dans l'article 2 de la Constitution comme une valeur en soi et non pas comme un principe. L'importance d'avoir des règles juridiques pertinentes permettant la mise en place de politiques et de programmes touchant à la dimension transversale de l'égalité a aussi été mise en évidence. On trouve déjà une bonne base juridique dans les traités communautaires, et il est important que la connaissance de ces instruments juridiques ne reste pas limitée à des cercles restreints d'experts, mais qu'elle soit largement mise à la disposition des acteurs de la société civile et que les responsables de la prise de décision, notamment les gouvernements, les législateurs et les juges, les mettent en application. Ce corpus juridique pourrait devenir un instrument utile au dialogue

entre le Nord et le Sud, allant dans le sens d'une amélioration du statut des femmes, et contribuer ainsi à renforcer l'égalité hommes/femmes dans tous les pays du partenariat.

Finalement, on a insisté sur l'importance de la dimension de l'égalité hommes/femmes dans les relations internationales de l'Union européenne, notamment dans ses programmes de coopération et particulièrement dans le partenariat euro-méditerranéen; l'égalité hommes/femmes et les instruments pour son application devraient être explicitement inclus dans les accords de coopération et d'association que l'Union européenne conclut avec les pays tiers, dans un dialogue ouvert et respectueux des droits de l'homme.

Les femmes et les jeunes sont plus que jamais des acteurs incontournables du dialogue des cultures. La prise en compte de leurs besoins et leur participation effective à la constitution d'un réel partenariat permettront le développement plus harmonieux de sociétés plus démocratiques et respectueuses des droits de l'homme.

## Las aportaciones de las mujeres y la sociedad civil Instrumentos legales

**Teresa Freixes** <sup>(65)</sup>

Universidad Autónoma de Barcelona

**Dirección General de Educación y Cultura  
Acción Jean Monnet**

Después de agradecer a la acción Jean Monnet que me haya dado la oportunidad de intervenir en esta conferencia y felicitar a la organización de la misma tanto por la oportunidad de su celebración como por el espíritu que preside su desarrollo, quiero empezar mi intervención leyendo un párrafo del texto aprobado en la Conferencia euromediterránea de Valencia, que tuvo lugar bajo Presidencia española y en cuyo «Foro de la sociedad civil» se incluyó un grupo de trabajo sobre la mujer, con participación de mujeres tanto del norte como del sur del Mediterráneo. Este párrafo contiene los principios en que se basa mi intervención:

«Reafirmamos la necesidad de volver a fundar la asociación euromediterránea con la finalidad de alcanzar la paz, la justicia, la libertad y la igualdad. En efecto, la colaboración euromediterránea, en sus dimensiones jurídicas, económicas y sociales, exige mecanismos de vigilancia de la práctica efectiva de los derechos de las mujeres como parte indivisible de los derechos humanos universales.»

La sociedad civil, y dentro de ella el colectivo femenino, constituye un elemento de extrema importancia para conseguir estos objetivos. La Declaración de Valencia, como no podía ser de otra manera, al enunciar los instrumentos de que las mujeres disponemos para alcanzar la igualdad real, se hace eco de la dimensión jurídica aplicable a la colaboración euromediterránea. Al mismo tiempo, la Declaración reclama la puesta en marcha de instrumentos de vigilancia de la práctica efectiva de los derechos de las mujeres en tanto que integrados en forma indivisible en los derechos humanos universales. Se menciona, pues, al Derecho como instrumento de remoción de obstáculos, entendiéndolo, pese a ello, que sólo con el derecho no se acaba con las discriminaciones (de ahí que se aluda también a las dimensiones económicas y sociales). No obstante, y hablándoles como jurista, quiero afirmar que necesitamos un derecho pertinente y adecuado, que nos permita actuar, en concordancia con otros mecanismos políticos, económicos y sociales, para conseguir que el diálogo intercultural tenga como uno de sus ejes transversales a la igualdad real entre las mujeres y los hombres.

### Los fundamentos de la inserción de la igualdad en el diálogo intercultural

Lo que acabo de afirmar no es una entelequia. En la Unión Europea tenemos un marco legal, compuesto por normas vinculantes de rango superior, los Tratados comunitarios, que proporcionan base jurídica suficiente para un desarrollo del derecho derivado, mediante reglamentos y directivas (algunos ya aprobados y en vigor), que incorporen la dimensión transversal de la igualdad y la apliquen, como no puede ser de otra manera, a las relaciones euromediterráneas. Y ese marco va a ser reforzado, tanto en relación con el alcance general de la igualdad como, a

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<sup>(65)</sup> Teresa Freixes es catedrática de Derecho constitucional en la Universidad Autónoma de Barcelona y catedrática Jean Monnet de Derecho constitucional europeo. Perteneció, como representante para España, al «Réseau UE d'experts indépendants en matière de droits fondamentaux». También ha sido miembro de la «Commission de suivi de la CIG» creada por la acción Jean Monnet con la presencia de académicos, europarlamentarios, miembros del Presidium de la Convención para el futuro de Europa y de la propia acción Jean Monnet.



escala específica, en la aplicación de las cláusulas de género en las relaciones exteriores y la cooperación con terceros países, cuando entre en vigor la Constitución europea.

En efecto, en el ámbito jurídico, en el marco del derecho europeo, tanto en el derecho de la Unión Europea como en el derecho del Consejo de Europa, y en el derecho de los Estados, la igualdad entre las mujeres y los hombres es un derecho fundamental insertado dentro de los derechos humanos universales. Desde esta perspectiva, la Carta de los Derechos Fundamentales de la Unión Europea constituye un texto paradigmático, ya que además de reconocer la igualdad entre las mujeres y los hombres, contiene disposiciones horizontales sobre el estándar o el nivel de protección y reenvíos al acervo comunitario, los tratados internacionales (en especial al Convenio Europeo de Derechos Humanos) y a las constituciones de los Estados. A partir de tales reenvíos, tenemos que acudir a estos textos para determinar, de forma jurídicamente pertinente, el ámbito de la igualdad entre las mujeres y los hombres. Además, la dimensión transversal que la igualdad adopta en el Tratado constitutivo de la Comunidad Europea, como misión, objetivo y medio de acción, que ha de estar presente en todas las políticas comunitarias, abre una dimensión de garantía para los derechos de las mujeres, jurídicamente desconocida hasta que fue incorporada por el Tratado de Amsterdam.

En este punto hay que señalar que estos dos grandes ámbitos jurídicos de la igualdad, como derecho fundamental que ha de ser reconocido en todos los ámbitos y como elemento transversal para todas las políticas, no se hubieran hecho presentes en el ordenamiento jurídico comunitario sin la activa presencia y la presión de las mujeres sobre los legisladores, es decir, sobre la Conferencia Intergubernamental que culminó en Amsterdam y sobre la Convención que elaboró la Carta de los Derechos Fundamentales. Hay que señalar, en este contexto, que todo ello se realizó con el apoyo de la Comisión de los Derechos de la Mujer del Parlamento Europeo y, sobre todo, de la Comisión Europea, que facilitó los encuentros y canalizó las propuestas que, desde la sociedad civil y, concretamente, desde las organizaciones de mujeres, se presentaron al Consejo, a los Estados miembros y a la Convención de la Carta. La acción del Lobby Europeo de Mujeres, creando un grupo de expertas jurídicas que fundamentó las propuestas, resultó determinante para la aprobación del Tratado de Amsterdam, con la igualdad transversal, las acciones positivas en el terreno profesional, la garantía de la igualdad salarial y en el acceso al empleo, la introducción de la igualdad en la configuración de las condiciones del trabajo o la no discriminación por razón de sexo o de orientación sexual<sup>(66)</sup>. El trabajo de la Asociación de Mujeres de Europa Meridional (AFEM), coordinando las propuestas que se enviaron a la Convención que elaboró la Carta de los Derechos Fundamentales de la Unión<sup>(67)</sup>, resultó determinante para que en ella se contemplara la igualdad entre las mujeres y los hombres en todos los ámbitos, considerando que las acciones positivas sobre el sexo menos representado no son contrarias al principio de igualdad de trato y regulando la conciliación entre la vida profesional y familiar<sup>(68)</sup>.

Estas organizaciones recién citadas y, además, la Red Ciudadanas de Europa, la Asociación Europea de Mujeres Juristas, la Asociación de Mujeres Juristas Themis, entre otras, se personaron también en las audiciones convocadas por la Convención para el futuro de Europa, defendiendo

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<sup>(66)</sup> Véase Freixes, T. (con la colaboración de M.C. Romao, K. Kenny, V. Eker): *Projet de réforme du traité de l'Union européenne en matière des droits fondamentaux, égalité entre les femmes et les hommes, citoyenneté et droits économiques et sociaux*, Quaderns de Treball nº 5, 1995.

<sup>(67)</sup> Véanse las actas de la conferencia de la AFEM: *L'égalité entre les femmes et les hommes: un droit fondamental – Actes de la conférence organisée les 21, 22 et 23 septembre 2000 au palais du Luxembourg, à Paris*. AFEM - Commission européenne - Gouvernement français, Paris, 2000.

<sup>(68)</sup> A este respecto, se puede consultar la elaboración de la Carta de los Derechos Fundamentales en: Freixes, T., y Remotti, J.C.: *El futuro de Europa: Constitución y derechos fundamentales*, ed. conjunta de la Universidad de Santiago de Compostela, UNED, Instituto Europeo de Derecho y Universidad de Valencia. MINIM, Ed. Valencia, 2002.

este acervo comunitario e impulsando que la Constitución europea incorpore los elementos de género pertinentes <sup>(69)</sup>. La propia acción Jean Monnet dedicó una de sus conferencias al estudio de la igualdad en el proyecto de Constitución europea, formulando propuestas para que la dimensión efectiva de la igualdad quedara garantizada en la Constitución, otorgando a la igualdad entre las mujeres y los hombres la configuración jurídica de valor de la Unión Europea. Esta configuración jurídica tiene efectos concretos, puesto que los Estados que se incorporen a la Unión deben asumir y promover la igualdad y, además, si se produjera una infracción grave, se puede iniciar un procedimiento de sanción o, incluso, de expulsión de un Estado miembro. Y también, en el mismo ámbito, se realizaron una serie de propuestas dirigidas a reforzar el carácter transversal y las manifestaciones específicas de la igualdad <sup>(70)</sup>.

Por otra parte, la dimensión de género se integró también, aunque tímidamente, en el «Rapport du groupe des sages» (informe del grupo de sabios) creado a iniciativa del Presidente de la Comisión Europea Romano Prodi, para iniciar una reflexión sobre «El diálogo entre los pueblos y las culturas en el espacio euromediterráneo» <sup>(71)</sup> enmarcado en el proceso de Barcelona. En este informe, partiendo de la universalidad de los valores democráticos, de los derechos humanos y del Estado de Derecho, aparece el principio de la igualdad en la diversidad y frente a las desigualdades que se puedan constatar, contexto en el que las mujeres cobran una singular importancia como vectores del cambio y sujetos privilegiados de un diálogo en el que, tal como se demuestra en el informe del Programa de las Naciones Unidas para el Desarrollo (PNUD) sobre «El desarrollo humano en el mundo árabe», las mujeres son por lo general los actores más dinámicos del desarrollo económico, [...] a pesar de las discriminaciones de que continúan siendo objeto. Además, el grupo de sabios, apoyando la creación de la Fundación Euromediterránea, propuso la inserción, en su seno de un «observatorio del género», en la idea de que los discursos fundamentados en la defensa del pseudoparticularismo o sobre la llamada «impermeabilidad» de ciertas culturas a la democracia o los derechos humanos no pueden tener credibilidad <sup>(72)</sup>.

Ciertamente, hay que insistir en que los derechos humanos son realmente universales y que, en palabras de Antonio Papisca, «el diálogo intercultural debe enmarcarse en el horizonte mundial y perseguir una finalidad que es proporcional a la amplitud del desafío: la construcción de un orden internacional pacífico y más justo, basado sobre el valor supremo de la dignidad humana y, por consiguiente, reglado por el Derecho internacional de los derechos humanos» <sup>(73)</sup>, incluyendo dentro del mismo los derechos de las mujeres y las niñas <sup>(74)</sup>.

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<sup>(69)</sup> La publicación electrónica de las aportaciones al Foro de la sociedad civil, se puede consultar en el sitio Futurum, en la siguiente página web: [http://europa.eu.int/futurum/forum\\_convention/index\\_es.htm](http://europa.eu.int/futurum/forum_convention/index_es.htm)

<sup>(70)</sup> Véanse estas aportaciones en la página web de la acción Jean Monnet, en la siguiente dirección electrónica: [http://europa.eu.int/comm/education/programmes/ajm/index\\_en.html](http://europa.eu.int/comm/education/programmes/ajm/index_en.html)

<sup>(71)</sup> Véase Comisión Europea, grupo de consejeros políticos: *Le dialogue entre les peuples et les cultures dans l'espace euro-méditerranéen. Rapport du groupe des Sages créé à l'initiative du président de la Commission européenne*, Comunidades Europeas, 2004. En adelante lo citaremos como: Rapport du groupe des Sages: *Le dialogue...*

<sup>(72)</sup> Rapport du groupe des sages: *Le dialogue...*, Comunidades Europeas, 2004, p. 37.

<sup>(73)</sup> Papisca, A.: «Séance "Droits humains et démocratie"», *Intercultural dialogue*, Bruselas, 20 y 21 de marzo de 2002, Comisión Europea, Dirección General de Educación y Cultura, acción Jean Monnet, 2002, p. 33.

<sup>(74)</sup> Papisca, A.: «Rapport introductif. Droits de la personne et démocratie - Les cultures à la source de l'universel», *Intercultural dialogue*, ya citado, p. 132. En la misma publicación, Michel Rocard insiste en la necesidad de igualar el estatuto jurídico de la mujer con el del hombre en todo el mundo como una necesidad intrínseca de la eficacia de los derechos humanos universales, pp. 223 y 227.

La mundialización, las interdependencias, la complejidad de este diálogo, en un tiempo marcado, al mismo tiempo, por el cambio de naturaleza del proceso de integración europea, cuando la Unión se está dotando de una Constitución en la que los derechos fundamentales y la igualdad entre las mujeres y los hombres constituyen un valor que ha de ser respetado y promovido por los Estados miembros, conllevan necesariamente un cambio en la articulación de los acuerdos de asociación y colaboración, que tenga presente las coordenadas de un diálogo intercultural adecuado a este momento histórico.

En este contexto, para aproximarnos a los elementos que deben estar presentes en este nascente marco jurídico de una Europa constitucional, es necesario examinar en qué punto estamos, en la prospectiva de lo que vamos a necesitar. Veamos, pues, cuál es la regulación jurídica vigente al respecto.

### **El ámbito jurídico de la igualdad entre las mujeres y los hombres**

El artículo 23 de la Carta de los Derechos Fundamentales establece:

*«La igualdad entre hombres y mujeres será garantizada en todos los ámbitos, inclusive en materia de empleo, trabajo y retribución.*

*El principio de igualdad no impide el mantenimiento o la adopción de medidas que ofrezcan ventajas concretas a favor del sexo menos representado.»*

Este artículo, que tiene su origen en el acervo comunitario en materia de igualdad, nos ofrece dos ámbitos de acción y dos clases de normas para desarrollarlo. Como ámbitos de acción, una dimensión transversal y diversas manifestaciones específicas. Las dos clases de normas, como veremos, hacen referencia a lo que se conoce como «derecho vinculante» y «derecho orientador».

#### **a) La naturaleza jurídica de las normas sobre la igualdad entre las mujeres y los hombres**

En todos los ámbitos de regulación de la igualdad es necesario tener en cuenta que, en el Derecho internacional y comunitario, las normas reguladoras pueden tener, según su naturaleza jurídica, un carácter vinculante (normas de *hard law*) o un valor orientador (normas de *soft law*).

Entre las primeras, en el sistema jurídico de los Estados, tenemos las constituciones, las leyes y reglamentos, así como las sentencias que tengan fuerza de ley y los convenios internacionales ratificados e integrados en el orden jurídico interno. Sin embargo, hay que señalar que no todas las normas que regulan la igualdad tienen este carácter aplicativo, ya que en el campo del Derecho comunitario, por ejemplo, sólo son vinculantes los Tratados, los reglamentos, las directivas, las decisiones y las sentencias del Tribunal de Justicia, así como los tratados internacionales ratificados por la Unión o la Comunidad Europea o los Estados miembros. En el ámbito del Consejo de Europa o de las Naciones Unidas, la Organización Internacional del Trabajo y otras organizaciones internacionales, sólo los tratados o convenios obligan directamente a los poderes públicos y ciudadanos. Y también hay que destacar, por su efecto vinculante, las sentencias del Tribunal Europeo de Derechos Humanos, obligatorias para los Estados a quienes afecten, que las deben ejecutar bajo la supervisión del Consejo de Ministros del Consejo de Europa y que tienen un alcance interpretativo general como estándar mínimo para la efectividad de los derechos del Convenio Europeo de Derechos Humanos en el territorio de todos los Estados que lo hayan ratificado.

Por otro lado, como normas de orientación de las políticas públicas, podemos señalar las recomendaciones y las resoluciones comunitarias, así como las de otras organizaciones internacionales como las Naciones Unidas o el Consejo de Europa, incluyendo las sentencias y dictámenes de sus órganos de control (salvo las sentencias del Tribunal Europeo de Derechos Humanos, que deben ser ejecutadas por los Estados a quienes conciernen). Estas normas, como derecho orientador, vinculan políticamente a sus signatarios, aunque no las podemos invocar ante los tribunales de justicia, puesto que no crean derechos subjetivos sino que prescriben mandatos a los poderes públicos cuyo incumplimiento puede generar responsabilidad política.

En este contexto, la sociedad civil, las organizaciones de mujeres, las mujeres en cuanto tales, incluso a nivel individual, somos responsables de la activación de los instrumentos de control que sean pertinentes en cada caso. Podemos acudir a los tribunales cuando la vulneración de la igualdad se origina por el quebranto de normas jurídicas de derecho vinculante. Podemos exigir responsabilidades políticas cuando nos encontremos ante violaciones de las recomendaciones prescritas por las normas de derecho orientador. También podemos sugerir los cambios jurídicos necesarios para lograr que la igualdad real entre las mujeres y los hombres constituya una realidad efectiva.

#### **b) La dimensión transversal de la igualdad entre las mujeres y los hombres**

Como consecuencia de que, en la Carta de los Derechos Fundamentales, la igualdad ha sido reconocida «en todos los ámbitos» (artículo 23, apartado 2, de la Carta de los Derechos Fundamentales) y de conformidad con los artículos 2 y 3 del Tratado constitutivo de la Comunidad Europea, en los que la igualdad se configura como misión de la Comunidad que ha de ser aplicada en todas políticas comunitarias, la igualdad entre las mujeres y los hombres tiene un carácter transversal, que se conoce también como el *mainstreaming* de género.

El Tribunal de Justicia de las Comunidades Europeas, interpretando y aplicando las normas comunitarias, también ha afirmado la configuración jurídica de la igualdad entre las mujeres y los hombres como derecho fundamental <sup>(76)</sup>, en conexión con situaciones jurídicas diversas; ha reconocido que la prohibición de cualquier forma de discriminación incluye también a las discriminaciones indirectas <sup>(76)</sup>, y ha aceptado la inversión de la carga de la prueba en los pleitos en los que se alega discriminación <sup>(77)</sup>.

Este carácter transversal ha originado la elaboración de criterios interpretativos en sentido amplio, los cuales deben ser efectivamente utilizados por los operadores jurídicos en la aplicación e interpretación de las manifestaciones específicas de la igualdad y la no discriminación.

#### **c) Las manifestaciones específicas de la igualdad entre las mujeres y los hombres**

A partir de las previsiones normativas concretas de los Tratados comunitarios y del derecho derivado, y teniendo en cuenta lo que disponen los reenvíos de las cláusulas horizontales de la Carta de los Derechos Fundamentales de la Unión, la igualdad entre las mujeres y los hombres presenta manifestaciones específicas, entre las cuales destacamos:

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<sup>(76)</sup> Así lo ha hecho desde el asunto C-80/70, *Defrenne*.

<sup>(76)</sup> Asuntos C-399/92, *Stadt Lengerich*; C-167/97, *Seymour-Smith y Pérez*; y C-184/89, *Nimz*.

<sup>(77)</sup> Asunto C-180/95, *Nils Draehmpaehl*. Esta jurisprudencia fue posteriormente añadida a la Directiva 97/80/CE.

La igualdad de remuneraciones por un mismo trabajo o por un trabajo de igual valor <sup>(78)</sup>, la igualdad de trato en el trabajo <sup>(79)</sup>, la igualdad de trato relativa a la seguridad social y las ayudas sociales <sup>(80)</sup>, la conciliación entre la vida profesional y familiar <sup>(81)</sup>, la organización no discriminatoria del trabajo a tiempo parcial <sup>(82)</sup>, la dignidad en el trabajo y la prohibición del acoso sexual <sup>(83)</sup>, las acciones positivas <sup>(84)</sup>, la participación equilibrada en la toma de decisión política económica y social <sup>(85)</sup>, el trato de la imagen de cada uno de los dos sexos en los medios de comunicación y la publicidad, la cooperación al desarrollo, la ciencia y la educación y la formación profesional continuada, las medidas contra la violencia sobre las mujeres y los niños, la perspectiva de género en los Fondos Estructurales y la aplicación de la igualdad en las previsiones presupuestarias y financieras, que se ha incorporado a los reglamentos reguladores de las diversas modalidades de los fondos <sup>(86)</sup>.

Tenemos, pues, en la Unión, un acervo normativo extenso, preciso y útil.

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- <sup>(78)</sup> Artículo 141, apartado 4, del Tratado CE (desde la entrada en vigor del Tratado de Amsterdam). En la jurisprudencia del Tribunal de Justicia, por todos: asuntos C-149/77, *Defrenne*; C-262/88, *Douglas Harvey Barber*; y C-381/99, *Brunnhöfer*.
- <sup>(79)</sup> Artículo 137, apartado 1, letra i), del Tratado CE; Directiva 2002/73/CE por la que se reforma la antigua Directiva de 1976 y Decisión del Consejo del 13 de marzo de 2000. En la jurisprudencia, por todos: asuntos C-32/93, *Carole Louise Webb*; C-13/93, *Onem*; C-345/89, *Stoeckel*; C-237/85, *Rummier*; C-222/84, *Johnston*; C-273/97, *Sirdar/The Army Board*; y C-345/89, *Stoeckel*.
- <sup>(80)</sup> Directiva 79/7/CEE del Consejo, de 19 de diciembre de 1978, y Directiva 96/97/CE del Consejo, de 20 de diciembre de 1996, por la que se modifica la anterior de 1986. En la jurisprudencia, por todos: asunto C-80/70, *Defrenne*, hasta los asuntos C-262/88, *Barber*, o C-366/99, *Griesmar*; asuntos C-435/93, *Dietz*, y C-12/81, *Garland*; asuntos C-249/96, *Lisa Jacqueline Grant*, y C-476/99, *Lommers*.
- <sup>(81)</sup> Reglamento (CE) n° 1260/1999, de 21 de junio de 1999, por el que establecen disposiciones generales sobre los Fondos Estructurales; Directiva 93/104/CE del Consejo, de 23 de noviembre de 1993, relativa a determinados aspectos de la ordenación del tiempo de trabajo; Directiva 97/81/CE del Consejo, de 15 diciembre 1997, y acuerdo marco entre sindicatos y patronales sobre el trabajo a tiempo parcial.
- <sup>(82)</sup> Directiva 97/81/CE del Consejo, 15 de diciembre de 1997, acuerdo marco entre sindicatos y patronales sobre el trabajo a tiempo parcial, cláusula 5.4. En la jurisprudencia, por todos: asunto C-96/80, *Jenkins*; asuntos C-170/84, *Bilka*, y C-171/88, *Rinner-Kühn*; asuntos C-281/97, *Krüger*, y C-33/89, *Kowalska*; asunto C-243/95, *Hill y Stapleton*.
- <sup>(83)</sup> Directiva del Parlamento Europeo y del Consejo, de 23 de septiembre de 2002, por la que se modifica la anterior de 1976. Introduce por primera vez la prohibición del acoso sexual en el Derecho comunitario vinculante.
- <sup>(84)</sup> Artículo 141, apartado 4, del Tratado CE (desde la entrada en vigor del Tratado de Amsterdam): No son contrarias al principio de igualdad de trato las ventajas dirigidas a facilitar al sexo menos representado el ejercicio de actividades profesionales o a evitar o compensar desventajas en sus carreras profesionales. En la jurisprudencia: asuntos C-450/93, *Kalanke*; C-409/95, *Marschall*; C-50/99, *Podesta*; y C-407/98, *Abrahamsson y Anderson*.
- <sup>(85)</sup> Sólo contamos con normas de derecho orientador: la Recomendación 96/694 del Consejo, de 2 de diciembre de 1996, sobre la participación equilibrada de las mujeres y los hombres en los procesos de toma de decisiones; la Resolución A3-0035/94, de 11 de febrero de 1994, sobre la participación de las mujeres en la toma de decisiones comunitarias, y lo acordado en la Conferencia europea de París, de 17 de abril de 1999, por la que los Ministros responsables de las políticas de igualdad en los Estados miembros, conjuntamente con las instituciones europeas, se comprometían a poner en marcha los instrumentos necesarios para promover la participación equilibrada entre las mujeres y los hombres en la toma de decisiones políticas, sociales y económicas.
- <sup>(86)</sup> El artículo 41 del Reglamento (CE) n° 1260/1999 del Consejo, de 21 de junio de 1999, por el que se establecen disposiciones generales sobre los Fondos Estructurales, ya disponía la perspectiva de género en el diseño y la evaluación de los Fondos Estructurales. Además, el Reglamento (CE) n° 1784/1999 del Parlamento Europeo y del Consejo, de 12 de julio de 1999, relativo al Fondo Social Europeo, también incorpora medidas para una utilización del Fondo enmarcada en la igualdad entre las mujeres y los hombres. Sucesivas reformas de la regulación de los Fondos Estructurales incorporan también la perspectiva de género.

## **La igualdad entre las mujeres y los hombres en los acuerdos de asociación y colaboración y en la cooperación al desarrollo**

Una de las manifestaciones específicas de la igualdad entre las mujeres y los hombres, especialmente importante en el contexto de esta conferencia, es la referente a la cooperación al desarrollo o los acuerdos de asociación y colaboración.

Sin duda alguna, en la prosecución de la igualdad entre las mujeres y los hombres en este ámbito, es necesario insertar esta igualdad en las normas que lo regulan. La cooperación y la colaboración, muy extendidas entre los Estados y las organizaciones europeas (Consejo de Europa y Unión Europea) de una parte y, de otra, los Estados del sur del Mediterráneo, a la luz de las normas vigentes que hemos mencionado, han de tener presente la dimensión de la igualdad, tanto como derecho fundamental, como desde la vertiente de elemento transversal a todas las políticas.

### **a) La inserción de la dimensión general de la igualdad como derecho fundamental en los acuerdos de cooperación o colaboración.**

En este contexto, para que la igualdad sea efectiva, como derecho fundamental, hemos de examinar las disposiciones de los acuerdos de cooperación o colaboración. Al hacerlo comprobamos que, hasta hace muy poco tiempo, los acuerdos Norte-Sur contenían siempre exigencias de respeto a los derechos humanos fundamentales como elementos indispensables para adoptar los acuerdos <sup>(87)</sup>, pero muchas veces sin comprender explícitamente los derechos de las mujeres ni la perspectiva de género.

A este respecto hay que recordar que cuando el Tratado constitutivo de la Comunidad Europea configura a la igualdad como misión, objetivo y medio de acción de la Comunidad, que ha de estar presente en todas las políticas comunitarias, se menciona expresamente, entre ellas, a la cooperación al desarrollo y a los acuerdos de asociación. Por lo tanto, para evitar interpretaciones erróneas y olvidos, es necesario insistir que la exigencia del respeto a los derechos de las mujeres debe ser incorporada a todos los acuerdos de cooperación o colaboración. Para ello, partiendo de la Declaración de Barcelona <sup>(88)</sup>, en la que se hace referencia la necesidad de respetar los derechos humanos, es necesario adicionar, después de la garantía de los derechos y libertades fundamentales, una garantía explícita de igualdad entre las mujeres y los hombres en todos los ámbitos. Además, cada vez que, en cualquier acuerdo de cooperación o colaboración se mencionen los derechos fundamentales, es necesario añadir «comprendiendo también los derechos de las mujeres».

En este contexto resulta paradigmático el Reglamento (CE) n° 1488/96 del Consejo, de 23 de julio de 1996, relativo a las medidas de acompañamiento financieras y técnicas (MEDA) de las reformas de las estructuras económicas y sociales en el marco de la colaboración

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<sup>(87)</sup> Desde principios de la década de 1990, la dimensión de la igualdad comenzó a estar presente en normas de derecho orientador (*soft law*). Así en la *Résolution du Conseil et des États membres réunis au sein du Conseil sur les droits de l'homme, la démocratie et le développement*, de 28 de noviembre de 1991, se proponía un soporte activo a las acciones dirigidas a asegurar a todos la igualdad de oportunidades.

<sup>(88)</sup> Declaración de Barcelona y asociación euromediterránea, Declaración final de la Conferencia ministerial euromediterránea de Barcelona de los días 27 y 28 de noviembre de 1995 y su programa de trabajo. En esta Declaración no se hace referencia a la igualdad entre las mujeres y los hombres. Tampoco en la Comunicación de la Comisión al Consejo y al Parlamento de 6 de septiembre de 2000, para preparar la cuarta reunión de Ministros euromediterráneos de Asuntos Exteriores titulada «Un nuevo impulso para el proceso de Barcelona» [COM(2000) 497 final, DO C 267 de 21.9.2001, p. 68], donde también se reclama el respeto de los derechos humanos.

euromediterránea (DO L 189 de 30.7.1996) <sup>(89)</sup>, que incluye invocaciones al respeto y consolidación de la democracia, los derechos humanos y el Estado de Derecho, al mismo tiempo que dispone en su anexo II: «Las medidas adoptadas en virtud del presente Reglamento deberán atender debidamente al fomento de la participación de la mujer en la vida económica y social. Se concederá especial importancia a la educación y a la creación de puestos de trabajo para las mujeres».

A partir de esta regulación, los posteriores desarrollos del Reglamento MEDA, incorporan medidas de impulso de la perspectiva de género y la igualdad entre las mujeres y los hombres <sup>(90)</sup>. El anexo II de la modificación del Reglamento MEDA del 27 de noviembre de 2000 <sup>(91)</sup> dispone: «Las medidas adoptadas en virtud del presente Reglamento tendrán en cuenta los análisis de las necesidades y del potencial de la mujer y del hombre en la vida económica y social, con el fin de incluir los aspectos de género en la programación y ejecución de la cooperación al desarrollo», insistiendo en que «se concederá especial importancia a la educación y a la creación de puestos de trabajo para las mujeres».

Teniendo en cuenta este precedente, es en el marco de la Conferencia ministerial de Valencia y su plan de acción <sup>(92)</sup> la primera vez que, en relación con el «proceso de Barcelona», se hace una referencia a la función de las mujeres en la vida económica, reclamando «el aumento de las oportunidades de las mujeres en la vida económica (acceso y participación en el mercado laboral y promoción de su papel en el mundo de los negocios)».

No estamos haciendo una petición gratuita o insólita. Constatamos regularmente que, pese a las disposiciones jurídicas anteriormente expuestas, la dimensión integral de la igualdad, en todos los ámbitos, no es una regla efectiva en los acuerdos Norte-Sur. Constatamos también regularmente que los derechos fundamentales no son aplicados ni interpretados como instituciones jurídicas que incluyen también los derechos de las mujeres como parte indivisible de los derechos humanos universales.

Sorprendentemente, en la Comunicación de la Comisión sobre la contribución de la Unión Europea al consenso de Monterrey <sup>(93)</sup>, en la que se hace un amplio análisis de la cooperación económica, incluyendo una «hoja de ruta» hasta más allá del 2006, la armonización de los procedimientos de cooperación y una larga serie de «propuestas de acción», no aparece referencia alguna a la perspectiva de género o a la igualdad entre las mujeres y los hombres.

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<sup>(89)</sup> Este Reglamento venía precedido de la Comunicación de la Comisión al Consejo y al Parlamento Europeo titulada «Programa de acción para la integración del factor género en la cooperación de la Comunidad al desarrollo», COM(2001) 295 final. En la Comunicación, la Comisión detallaba la articulación del factor género en cada nivel de la cooperación al desarrollo.

<sup>(90)</sup> Otras referencias genéricas a la necesidad de incorporar la perspectiva de género en las relaciones de la Unión Europea con terceros países las encontramos en documentos como la Comunicación de la Comisión al Consejo y al Parlamento Europeo titulada «El papel de la Unión Europea en el fomento de los derechos humanos y la democratización en terceros países», Bruselas, 8 de mayo de 2001, COM(2001) 252 final.

<sup>(91)</sup> Reglamento (CE) n° 2698/2000 del Consejo, de 27 de noviembre de 2000, que modifica el Reglamento (CE) n° 1488/96 del Consejo, relativo a las medidas de acompañamiento financieras y técnicas (MEDA) de las reformas de las estructuras económicas y sociales en el marco de la colaboración euromediterránea.

<sup>(92)</sup> Comunicación de la Comisión al Consejo y al Parlamento Europeo de 13 de febrero de 2002, de preparación de la reunión de Ministros euromediterráneos de Asuntos Exteriores en Valencia los días 22 y 23 de abril de 2002, SEC(2002) 159 final (DO C 127 E de 10.4.2002, p. 159).

<sup>(93)</sup> Comunicación de la Comisión al Consejo y al Parlamento Europeo titulada «Puesta en práctica del consenso de Monterrey: contribución de la Unión Europea», Bruselas, 5 de marzo de 2004, COM(2004) 150 final.

Pero lo peor que constatamos, es que cada vez que remarcamos estas omisiones, la respuesta política que obtenemos es que la base jurídica comunitaria, actualmente, es insuficiente. Respuesta errónea, a todas luces, desde la perspectiva de los Tratados comunitarios vigentes, donde consta que la igualdad entre las mujeres y los hombres es una misión, un objetivo y un medio de acción que ha de estar presente en todas las políticas comunitarias, dentro de las cuales se enuncia directamente la cooperación al desarrollo y la asociación con terceros países.

Así, la propia Comisión Europea considera: «El fundamento de la actuación de la Unión Europea (UE) está claro; su deseo es defender la universalidad y la indivisibilidad de los derechos humanos —civiles, políticos, económicos, sociales y culturales— declaradas en la Conferencia Mundial de Viena de 1993 sobre los Derechos Humanos. Defiende asimismo el principio de que los derechos de las mujeres y niñas forman parte inalienable, integral e indivisible de los derechos humanos universales, según se afirmó en la Declaración de Pekín y la Plataforma de Acción de 1995». Al mismo tiempo, la Comisión proclama: «La actuación de la Comisión en el ámbito de las relaciones exteriores se guiará por el respeto de los derechos y principios recogidos en la Carta de los Derechos Fundamentales de la Unión Europea que se proclamó oficialmente en la Cumbre de Niza de diciembre de 2000, ya que esto facilitará la coherencia entre los enfoques de la UE en los ámbitos interior y exterior». De este modo, cuando la Comisión establece sus prioridades temáticas, en el marco de la «Iniciativa europea para la democracia y los derechos humanos» (IEDDH), realiza un llamamiento para «asegurar [...] que el fomento de la igualdad entre hombres y mujeres, así como de los derechos del niño, se integre como aspecto fundamental en todas las prioridades temáticas señaladas dentro de la IEDDH» <sup>(94)</sup>.

Tenemos, pues, una base jurídica suficiente y pertinente y, nosotros, europeos y europeas, somos los que estamos mejor situados para introducir estas cláusulas de género en el derecho regulador de los acuerdos de cooperación y colaboración o los acuerdos de asociación o cooperación. Para ello, hay que impulsar que el diálogo intercultural alcance al conjunto de la sociedad y se salga del marco elitista en el que habitualmente está confinado <sup>(95)</sup>. El objetivo general de la igualdad entre los sexos y el impulso de la acción de las mujeres en la sociedad ha sido incorporado en los acuerdos que están en vigor con Marruecos, Túnez, Israel y Jordania, así como, a título provisional, con la Autoridad Palestina, Egipto y el Líbano. En la reunión euromediterránea intermedia de Dublín, en mayo de 2004, los Ministros subrayaron la importante contribución de las mujeres en todos los sectores, incluyendo la enseñanza, los servicios públicos, la administración de justicia, los negocios, la agricultura y el desarrollo rural; además, incluyeron la promoción del papel de las mujeres en la sociedad, tanto en el norte como en el sur del Mediterráneo, entre los principales retos de la asociación euromediterránea <sup>(96)</sup>.

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<sup>(94)</sup> Véase la Comunicación de la Comisión al Consejo y al Parlamento Europeo titulada «El papel de la Unión Europea en el fomento de los derechos humanos y la democratización en terceros países», Bruselas, 8 de mayo de 2001, COM(2001) 252 final.

<sup>(95)</sup> Reclamación efectuada por Hartmut Kaelble. Véase la «Conclusión general» expresada por éste en las conclusiones del Comité Científico, *Intercultural dialogue*, ya citado, p. 51.

<sup>(96)</sup> Conclusiones de la Presidencia sobre la «Réunion à mi-parcours des ministres euro-méditerranéens des affaires étrangères» (Dublín, 5 y 6 de mayo de 2004), *Euromed Report*, edición n° 76, 4 de junio de 2004.



Como se puede apreciar, no sólo en el norte del Mediterráneo se defienden estas posiciones. Hace pocos meses, en Túnez, también la Liga Árabe anunció que estaba trabajando en cláusulas de derechos humanos que contengan también, específicamente, los derechos de las mujeres <sup>(97)</sup>. También sabemos que las mujeres del Sur esperan mucho de la acción de la Unión Europea. El Sur se encuentra hoy en día en una fase en la que, en palabras del grupo de sabios, le es urgente «entrar en un diálogo inter e intracultural», que «no se podrá hacer más que participando plenamente en un diálogo euromediterráneo que no excluya en modo alguno los diálogos árabe-africanos, por ejemplo, o los diálogos con las otras grandes áreas del mundo» <sup>(98)</sup>. El propio grupo de sabios, en este contexto, al abordar los principios comunes en los que se puede fundamentar este diálogo, se hace eco de la necesidad de alcanzar la igualdad entre los hombres y las mujeres <sup>(99)</sup> y de que, en el desarrollo humano en el mundo árabe, «las mujeres son por regla general los actores más dinámicos del desarrollo económico [...], a pesar de las discriminaciones de que continúan a menudo siendo objeto» <sup>(100)</sup>.

Nos encontraríamos, pues, con una postura receptiva en la otra orilla. Y hemos de remarcar, también, que la introducción de la perspectiva de género que reclamamos (que no se reduzca a cláusulas genéricas, sino que incluya medidas específicas) es posible con pequeños cambios, que se podrían incorporar con mínimas reformas de la legislación vigente.

#### **b) Las necesidades específicas de la igualdad en los acuerdos de asociación o colaboración y en la cooperación al desarrollo**

En este sentido, es necesario precisar que las normas de cooperación o asociación, además de una cláusula genérica que se refiera a la integración de la perspectiva de género y la igualdad entre mujeres y hombres en todos los ámbitos, deben incorporar garantías específicas para la efectiva realización de la igualdad, encaminadas a conseguir la desaparición de los obstáculos que todavía persisten. Para ello contamos con la reciente aprobación del Reglamento (CE) n° 806/2004 relativo al fomento de la igualdad entre el hombre y la mujer en la cooperación al desarrollo <sup>(101)</sup>, que, además de integrar la perspectiva de género en todos los niveles y las fases de la cooperación, describe una serie de medidas específicas para evitar o compensar las desigualdades entre el hombre y la mujer en el ámbito del propio Reglamento.

Es, también, necesario añadir cláusulas que prohíban toda clase de discriminación en la aplicación de los acuerdos de asociación o colaboración o en la cooperación al desarrollo. Como iniciativas concretas, podemos destacar la de la Asamblea Paritaria ACP-CE, en su Resolución sobre los derechos de los niños y en particular de los niños soldados, solicitando la adopción de un instrumento legislativo específico contra diversas formas de violencia, comprendiendo las mutilaciones genitales femeninas <sup>(102)</sup>. Este mismo órgano, en la

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<sup>(97)</sup> Desde otras organizaciones de ámbito internacional como, por ejemplo, la Asamblea Paritaria ACP-CE, se han hecho también llamamientos a la incorporación de medidas dirigidas a reforzar el papel y la participación de las mujeres. Así consta en: Asamblea Paritaria ACP-CE, Comunicación a los miembros. XXX sesión en Abuja (Nigeria), 23 de marzo de 2000.

<sup>(98)</sup> Rapport du groupe des Sages: *Le dialogue...*, ya citado, p. 21.

<sup>(99)</sup> Rapport du groupe des Sages: *Le dialogue...*, ya citado, p. 29.

<sup>(100)</sup> Rapport du groupe des Sages: *Le dialogue...*, ya citado, p. 31.

<sup>(101)</sup> Reglamento (CE) n° 806/2004 del Parlamento Europeo y del Consejo, de 21 de abril de 2004, relativo al fomento de la igualdad entre el hombre y la mujer en la cooperación al desarrollo (DO L 143 de 30.4.2004).

<sup>(102)</sup> Asamblea Paritaria ACP-CE, *Résolution sur les droits des enfants et en particulier les enfants soldats*, ACP-EU 3587/03/déf.

Resolución sobre los acuerdos de asociación económica, invita a los Estados y regiones ACP a estudiar la incidencia de los acuerdos comerciales sobre las mujeres, incluyendo la presentación de las estadísticas desagregadas por sexos y la elaboración de indicadores pertinentes que permitan apreciar con precisión la incidencia de los diferentes aspectos de los acuerdos comerciales sobre los hombres y las mujeres en los diferentes países ACP <sup>(103)</sup>. Y, en otra resolución relativa a cuestiones de salud, la Asamblea Paritaria ACP-CE introduce la perspectiva de género para insistir en el estudio específico de los problemas de salud relacionados con el umbral de la pobreza, el abandono precoz del sistema educativo o la pertenencia a grupos especialmente vulnerables, como medidas dirigidas a mejorar la relación entre población y desarrollo <sup>(104)</sup>.

Se tiene asimismo que introducir la perspectiva de género en los criterios de selección y evaluación de los proyectos y los resultados, tal como dispone el Reglamento (CE) n° 806/2004 antes mencionado. Desde esta perspectiva, sería también pertinente, en la regulación de los criterios de atribución de programas y proyectos concretos, añadir que se deben establecer acciones positivas para favorecer la presentación de programas y proyectos dirigidos por mujeres y/o compuestos de un comité de gestión que responda al principio de la representación equilibrada entre mujeres y hombres.

También sería útil que los organismos que evalúan los proyectos tuvieran en cuenta el efecto de género que se puede producir con su desarrollo. O que en las convocatorias se estableciera que en todo tipo de proyectos se debe incluir la evaluación de efecto de género.

Ya que los acuerdos de asociación, cooperación o colaboración tienen un fuerte componente económico, la perspectiva integral de la igualdad exige también medidas adecuadas, en todos y cada uno de los desarrollos del Reglamento MEDA, para favorecer la transición hacia un desarrollo sostenible y un crecimiento económico en igualdad, especialmente en la política de empleo y en las ayudas para las pequeñas y medianas empresas, teniendo también en cuenta la perspectiva de género. En este sentido, las mujeres y las asociaciones de mujeres deben ser consideradas como sujetos activos, no segregados, de participación y de acción de la sociedad civil.

Estas propuestas son posibles. Contamos ya con precedentes. El Tratado de Amsterdam y el reglamento de los Fondos Estructurales (FEDER, FEOGA, Fondo Social) cuentan con exigencias vinculantes sobre la igualdad. El Reglamento MEDA, como hemos visto, contiene, conjuntamente con sus reformas, cláusulas genéricas y medidas más o menos concretas para introducir la perspectiva de género y avanzar hacia la efectiva igualdad entre las mujeres y los hombres en todo el marco del Mediterráneo. Este cambio, esta «refundación» de la asociación euromediterránea, es pertinente y posible, y es necesario encontrar los medios apropiados para que estas regulaciones obligatorias estén también presentes en todos los ámbitos de la cooperación Norte-Sur.

La creación, en el marco del desarrollo del proceso de Barcelona, de una Red Euromed-femmes, tal como se solicitó en el Foro civil de Valencia, sería también un útil instrumento de análisis y propuesta, desde las dos orillas del Mediterráneo, que favorecería el diálogo cultural y la consolidación de la igualdad en dignidad. Existen ya otras redes Euromed, tales como Euromed Audiovisual, Euromed Héritage o Euromed Jeunesse, y nada impide la crea-

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<sup>(103)</sup> Asamblea Paritaria ACP-CE, *Résolution sur les accords de partenariat économique (APE): difficultés et perspectives*, ACP-EU 3643/04/déf.

<sup>(104)</sup> Asamblea Paritaria ACP-CE, *Résolution sur les maladies liées à la pauvreté et la santé en matière de reproduction dans les États ACP, dans le cadre du neuvième FED*, ACP-EU 3640/04/déf.

ción de otra red, especializada en asuntos de género, complementaria de las creadas con anterioridad y que pueda promover la dimensión de la igualdad en el marco Euromed. La puesta en marcha de la Fundación Euromediterránea, contando entre sus principios inspiradores el de la igualdad entre las mujeres y los hombres, e incluyendo la perspectiva de género en la composición de sus órganos y la organización de sus trabajos <sup>(105)</sup>, constituiría también un importante instrumento para impulsar, con igualdad desde la diversidad, un espacio más equitativo del diálogo euromediterráneo.

La Constitución europea, de próxima ratificación por los Estados, debe ser utilizada para reforzar este marco jurídico y añadir nuevas perspectivas a su desarrollo. La eficacia que va a obtener la Carta de los Derechos Fundamentales al ser incorporada al texto constitucional, el mantenimiento del *mainstreaming* o igualdad transversal, las regulaciones específicas que la igualdad adopta en el Tratado Constitucional, las acciones positivas, se complementan con las regulaciones que se observan en relación con la política exterior y de cooperación y colaboración. Así, el texto de la Constitución europea dispone que la acción exterior de la Unión tendrá que basarse en políticas de cooperación que salvaguarden los valores de la Unión (entre los cuales se ha incorporado la igualdad entre las mujeres y los hombres), la democracia, el Estado de Derecho, los derechos humanos y los principios del Derecho internacional. La igualdad constitucional entre las mujeres y los hombres como valor, como derecho fundamental, como objetivo y como elemento transversal de todas las políticas, por la carga intrínseca que conlleva en el marco del diálogo intercultural, va a precisar de un amplio desarrollo, como realización de la Constitución europea

Pero no hace falta esperar a la entrada en vigor de la Constitución. Como hemos constatado, ya en estos momentos, con la base jurídica de los Tratados vigentes, podemos adoptar nuevas regulaciones y dotar a las políticas comunitarias, en el marco euromediterráneo, de los instrumentos jurídicos necesarios para que este necesario diálogo intercultural promueva la efectiva realización de la igualdad real. La reforma de la reglamentación derivada del proceso de Barcelona, desde la perspectiva de género, posible y pertinente, contribuiría a dar un mejor sentido a ese diálogo que reclamamos, difundiendo los objetivos de la igualdad e incorporando a las mujeres a la definición de las políticas. Con ello estaríamos favoreciendo, en suma, a un mejor desarrollo, no sólo económico, sino también democrático, en todo el ámbito euromediterráneo. En definitiva, a un desarrollo más justo.

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<sup>(105)</sup> El grupo de sabios se expresa también en este sentido. Véase el Rapport du groupe des Sages: *Le dialogue...*, ya citado, pp. 30-31.

# W O R K S H O P 3

Citizenship and social change in Europe

(Immigration and integration)

# A T E L I E R 3

La citoyenneté  
et les changements sociaux en Europe

(L'immigration et l'intégration)

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### I. Dialogue culturel et représentations collectives

1. Au-delà des envolées lyriques auxquelles on assiste dans les grandes réunions diplomatiques sur «la solidarité et la fraternité euro-méditerranéennes», un constat affligeant s'impose: la relation culturelle euro-méditerranéenne et euro-arabe est ébréchée, voire brisée. Cet état de choses n'est plus tenable. C'est pour cela qu'une plate-forme culturelle en Méditerranée s'avère aujourd'hui plus nécessaire que jamais. Il est grand temps, en effet, de *rompre avec les rhétoriques accusatrices et les polarités négatives et antagonistes et de rejeter les idées toutes faites* et les analyses faciles qui imputent à une culture ou à une religion la causalité immédiate des problèmes économiques, sociaux et politiques qui tenaillent surtout la rive sud de la Méditerranée et enveniment les relations de voisinage. Ces analyses, qui se situent hors histoire, hors géographie, hors sciences humaines, conduisent inmanquablement à une simplification dangereuse des vraies césures léguées par une histoire longue où les vainqueurs de la géopolitique ont exercé leur force sans mesure.

2. Un vrai dialogue culturel entre les peuples de la Méditerranée ne peut guère faire l'économie d'une *lecture critique d'une histoire commune*, passée et récente, pour comprendre la construction des imaginaires sur les deux rives, mais aussi et surtout la fonction instrumentale d'une lecture du passé qui procède d'une volonté de le sacraliser plus que la nécessité de le dépasser, pour imaginer un futur solidaire en Méditerranée.

3. Ainsi, *le dialogue culturel passe d'abord par le travail des historiens* pour clore les pages sombres de l'histoire et inventer une nouvelle modalité d'un «vivre-ensemble». Mais il sera vain de chercher à fermer le passé avant de l'avoir ouvert à tous, car la bataille du futur se livre aussi sur le terrain du passé.

4. À cet égard, il convient, d'une part, d'analyser correctement la construction historique des représentations collectives et le rapport à l'altérité sur les deux rives de la Méditerranée et, d'autre part, de se demander comment inscrire les références au passé dans une dynamique de coexistence pacifique et non dans une dynamique de «revanche» et de violence. Parallèlement à ces deux questions, *il est impératif de procéder à un travail de «mémoire»* pour éviter une instrumentalisation du passé dans des combats politiques actuels.

5. *La relation culturelle entre l'Europe et son Sud, surtout arabo-musulman, est marquée par une série de stéréotypes et de représentations négatives.* Le stéréotype obéit à un processus simple de fabrication: la confusion de l'attribut et de l'essentiel, du général et du particulier, et sur le plan sociologique du singulier et du collectif. Porteur d'une définition de l'autre, le stéréotype est l'énoncé d'un savoir collectif qui se veut valable à quelque moment historique que ce soit. Coller, par exemple, à certains peuples du Sud l'étiquette de fanatiques, d'intégristes et de terroristes correspond parfaitement à ces images stéréotypées qui dévoilent le refus du dialogue et surtout une culture tautologique où toute analyse critique est exclue, au profit de quelques définitions «essentialistes».

6. *Paradoxalement, plus quelqu'un est proche, plus il alimente les stéréotypes.* S'est-on interrogé pourquoi l'Orient turco-arabe hante-t-il le regard de l'Occident depuis si longtemps? C'est sans doute parce qu'il est «la différence du plus proche», «l'étranger le plus intime». Un élément constitutif du moi européen. Comprendre cela, c'est déjà rompre avec ces binômes traumati-

sants (Orient/Occident, islam/christianisme, Nord/Sud, le semblable/le différent, eux/nous) pour inventer de nouvelles modalités d'une connivence méditerranéenne.

7. En Europe, le problème de l'altérité — arabe et musulmane en particulier — se pose avec acuité, précisément à cause des complicités de l'histoire et de la proximité géographique. Quatorze siècles de frottement entre l'islam et l'Europe ont produit un imaginaire collectif européen qui continue, jusqu'à nos jours, à vicier les rapports entre les deux rives et à entraver la communication interculturelle. Bon nombre de stéréotypes actuels sont hérités de la période coloniale (fanatisme, refus des valeurs occidentales et la prétendue incompatibilité de l'islam avec le développement et la démocratie). La perception se fait plus négative encore, surtout depuis la fin du système bipolaire. Au péril jaune (japonais ou chinois), au péril rouge (l'Union soviétique), semble succéder, dans l'imaginaire occidental, le *péril vert*, celui de l'islam, comme si l'Occident ne pouvait se poser qu'en s'opposant. Ainsi, l'Orient, surtout arabe, devient synonyme de menace, dans la plus pure logique des chantages du choc des civilisations. Plus préoccupant encore: pour comprendre la violence qui sévit dans le monde arabe, c'est au Coran qu'on recourt. On rappelle à satiété l'importance du *djihad* (qu'on traduit abusivement par «guerre sainte») en islam et on met en épingle la propension des musulmans pour le terrorisme. Pour expliquer la violence et le fanatisme sous d'autres cieux (Irlande, Inde, Colombie, Espagne ou Afrique), on met toutes les sciences humaines à contribution. Mais *dans l'imaginaire collectif occidental, l'islam et l'Orient arabe en particulier, c'est une sorte de «trou noir», une «zone de ténèbres» impénétrable. Ce qui s'y passe, nous dit-on, n'est que le mal (axe of evil), barbarie et fanatisme.*

8. *De telles représentations dénotent une indigence de la pensée et une posture de paresse, commode mais particulièrement pernicieuse. Le rôle des médias — du monde du cinéma et de la chanson — dans la reproduction de ces stéréotypes n'est pas négligeable. Il reflète la dictature qu'exerce l'audimat sur l'information qui, souvent, oblige les médias à servir le même repas, assaisonné de clichés et de phrases toutes faites qui provoquent des césures irréparables dans la coexistence harmonieuse entre les peuples et à l'intérieur de chacun des États.*

9. C'est dire l'urgence d'appréhender l'Orient (arabe et musulman) autrement qu'en termes de menace ou d'invasion. De tels fantasmes s'expriment désormais dans les romans, les pamphlets, voire même des ouvrages universitaires. Le partenariat euro-méditerranéen, lancé en 1995, ne semble pas avoir exorcisé les peurs de l'Europe. Cependant, les discours alarmistes sur l'immigration, notamment clandestine, tendraient à transformer la Méditerranée en *limes*, entourés de cordons sanitaires séparant l'Europe «civilisée» des «trubions» du Sud. Au demeurant, la réactivation du mythe «néo-andalou» (rappel de la période andalouse de la coexistence entre les trois religions monothéistes) et *toute cette rhétorique sur la «Méditerranée réinventée»* ne doivent pas occulter le fait indéniable que révèlent les sondages d'opinion: des perceptions négatives de l'islam et des autres peuples arabes dans tous les pays de l'UE.

10. À cet égard, *accueillir dans l'Europe de demain un pays à forte majorité musulmane* (la Bosnie-et-Herzégovine par exemple) non seulement aiderait à changer le paysage des représentations géopolitiques de la Méditerranée «en cassant l'idée d'une fracture ethno-religieuse naturelle dans cette région», mais aussi représenterait une magnifique pédagogie au dialogue culturel.

11. *Le travail de déconstruction de l'imaginaire collectif négatif sur l'autre doit également concerner les pays du sud de la Méditerranée, notamment les pays arabes. Comme les Européens, eux aussi ont un regard déformé, notamment sur l'Occident proche et lointain. Certes, ce regard n'est pas univoque puisque l'Occident fascine et répulse à la fois, puisqu'il est à la fois aimant et repoussoir. Il attire par son art de gouvernement, les libertés de ses citoyens et ses avancées techniques, économiques et sociales, mais répulse par le fait d'être perçu comme sûr de lui-même et dominateur.*

12. Aujourd'hui, *le monde arabe vit dans une situation défensive* telle qu'aucun travail sérieux d'autocritique ne semble possible, tant il est préoccupé par le souci d'affirmer son identité considérée comme constamment agressée. D'ailleurs, quand on lit des textes arabes sur l'identité, on est frappé de constater que ce n'est pas tant l'identité en soi qui préoccupe, mais bien l'identité par rapport à autrui: à Israël, à l'Europe, à l'Occident, aux non-musulmans et aux pays voisins non arabes. C'est bien le couple «moi-l'autre» qui fonde l'identification culturelle arabe, comme si l'existence de l'autre présupposait la conscience de soi, comme si l'autre (en l'occurrence l'Occident) était en réalité un second moi-même. Cela produit un paradoxe: le monde arabe veut être l'artisan autonome de sa propre histoire, mais se révèle en même temps «incapable de la penser autrement qu'en référence à cet autre que l'on combat». C'est pour cela que l'écriture historique du Sud demeure prisonnière de l'étau ethnique, aboutissant à une survalorisation du passé «glorieux» et à une culture «victimaire» qui entrave la production d'un discours innovant.

13. Il faut reconnaître que *l'histoire du monde arabe depuis plusieurs siècles a été jalonnée d'événements douloureux* où l'Europe ne peut se dégager de toute responsabilité – expédition de Napoléon en Égypte et en Palestine (1798-1799), balkanisation du monde arabe (période coloniale), colonisation de l'Algérie, installation d'un État juif au cœur du monde arabe (1948), guerre de Suez (1956), sans compter toutes les autres guerres qui ont ensanglanté leurs populations au cours des dernières décennies. Que l'Occident, depuis plusieurs siècles, ait dominé, occupé, dépecé l'espace arabe et acquis par rapport à lui une supériorité technique, scientifique et militaire, voilà qui ne souffre aucun doute. Que l'Occident ait été, jusqu'à récemment, moins sensible aux souffrances du peuple palestinien et qu'il ait cherché à défendre ses intérêts, fût-ce au prix d'ignorer les intérêts légitimes des Arabes (en Afrique du Nord comme au Moyen-Orient), ce sont là, pour la majorité des Arabes, presque des évidences.

14. Mais ce qui est pernicieux dans toute représentation collective, notamment celle qu'ont les Arabes de l'Occident, surtout européen, c'est le *fantasme à la conspiration*, comme si la seule préoccupation de l'Occident était de domestiquer les Arabes pour prendre le contrôle de leur espace et de leurs ressources. Cette attitude, que pourrait expliquer, en partie, le rapport passé entre l'Europe et le monde arabe, comporte cependant le risque d'un raidissement doctrinal, d'une crispation irréversible des positions, voire une escalade de la violence qui n'est bénéfique pour personne. Sans compter qu'une position d'opposition systématique qui se nourrit des souffrances passées ne permet pas d'envisager le futur méditerranéen en termes de bon voisinage.

15. *La réaffirmation identitaire est sans doute une des formes de résistance culturelle* des Arabes et des musulmans. Mais elle ne doit pas nécessairement impliquer le rejet de l'autre, notamment l'Occident. Au contraire, elle doit tendre davantage à valoriser son propre héritage, enrichi par les apports positifs des autres cultures, et la négociation d'une nouvelle relation avec l'Europe, fondée sur le respect mutuel.

16. *Ces considérations sur les représentations collectives posent non seulement le rapport à l'autre, mais aussi le rapport de chaque culture au passé et à la mémoire.* Parce que les identités méditerranéennes constituent une accumulation d'expériences qui plongent leurs racines au fond de l'histoire, de traumatismes anciens et plus récents, de blessures toujours béantes, on se trouve face à des communautés enfermées sur leur propre malheur. Le témoignage mémoriel est si fort, de la Serbie à l'Algérie en passant par la Bosnie et la Palestine, que les peuples de la Méditerranée semblent vissés à leur passé, de sorte qu'on a le sentiment que le futur est pris en otage par le passé, surtout quand celui-ci est jalonné de terribles souffrances, ou au contraire est enjolivé au point de représenter une sorte de référent historique.

17. Certes, tous les peuples ont une mémoire collective. Celle-ci est un élément constitutif de l'identité. Il faut toutefois veiller à ce que la fidélité à une mémoire construite n'entre pas en collision avec le savoir historique contrôlé. Le dialogue culturel en Méditerranée, que ce soit entre sa rive nord et sa rive sud ou même à l'intérieur de chacun des États, passe par un travail sur la mémoire pour *intégrer la mémoire de l'autre*. Cela vaut pour les pays de l'ex-Yougoslavie, mais surtout pour le conflit israélo-arabe qui structure le rapport problématique entre les Arabes (et même les musulmans) et l'Occident au sens large et demeure un obstacle majeur à un dialogue culturel rénové. Or, ce conflit restera sans solution tant qu'on n'aura pas établi clairement les responsabilités dans les tragédies dont la puissance traumatique ne relève pas seulement du souvenir, mais aussi du vécu quotidien des populations concernées.

18. *Reconnaître la souffrance de l'autre s'avère*, aujourd'hui, primordial non seulement pour sa valeur «thérapeutique» (effet de guérison), mais aussi pour sa valeur restauratrice (redressement des torts subis) et libératrice (libération de l'histoire des filets de la mémoire instrumentale). Reconnaissance des torts, réparation, réconciliation et pardon, telle est la nouvelle utopie méditerranéenne capable d'extraire les peuples de leur victimologie.

19. *La persistance du conflit israélo-arabe non seulement produit des effets dévastateurs sur les imaginaires croisés*, mais a amené les protagonistes, surtout depuis 1948, à construire une légitimité en niant radicalement celle de l'adversaire. Or, les peuples palestinien et israélien, enfermés dans le cercle infernal de la violence, doivent inventer un autre chemin émancipateur pour s'extirper du gouffre. Cela passe, d'abord, par la subversion de la logique qui a longtemps structuré leurs rapports: celle du déni, de la force et de la puissance. Israël, parce qu'il a été le vainqueur de la géopolitique, doit faire preuve d'une grande audace pour intégrer l'histoire de l'autre: celle des Palestiniens. Cela implique une autre lecture historique et une mise à plat de bon nombre de ses mythes fondateurs.

20. Quant aux Palestiniens, ils ne peuvent plus se battre avec des clichés du genre «Israël finira par disparaître comme a disparu le royaume latin des croisés». Les mythes mobilisent les foules, mais immobilisent la pensée et entravent la production d'un discours pertinent. L'heure est venue pour un travail d'éveil d'une conscience critique, plus informée sur les vrais enjeux et les vrais choix. Cet éveil passe par un travail sur soi, pour domestiquer le passé et inventer le futur. *Les morts doivent laisser la place aux vivants*.

21. C'est dire combien *Israéliens et Palestiniens ont besoin d'une autre démarche morale, d'une autre relation à la mémoire, d'un autre regard sur l'adversaire*, et sans doute de dirigeants capables de proposer à leur peuple autre chose que des vengeances stériles et des murs de séparation.

22. *Le conflit israélo-palestinien oppose deux peuples à la mémoire longue*, revendiquant chacun, à sa manière, une sorte de monopolisation victimaire. Certes, il est commode d'adopter la posture de la victime, légitimant par les épreuves subies dans le passé ou dans le présent un droit prioritaire à la compassion. Cette attitude ne mène nulle part. C'est pour cela que la reconnaissance de la souffrance de l'autre et des peurs qui le tenaillent est une condition essentielle de la rencontre logique, la seule susceptible de remettre en question l'usage instrumental d'une histoire-plaidoyer, convoquée, trop commodément, moins pour éclairer le passé que pour conforter le présent.

23. Si nous attachons une telle importance à une solution équitable du conflit israélo-palestinien et, au-delà, du conflit israélo-arabe, c'est parce que ce *conflit* — plus que les autres en Méditerranée — produit des souffrances incalculables et des injustices flagrantes, connaît des rebondissements tragiques depuis plus de soixante ans, continue à marquer durablement le



rapport de l'Europe avec la Méditerranée du Sud, rejaillit hors de son espace géographique, *empoisonne le climat dans la région* et hors de celle-ci en même temps qu'il contribue grandement à la dilapidation de ressources considérables, humaines et financières, si nécessaires à la construction d'un avenir partagé.

*Le déraillement du processus de paix et le raidissement des positions bloquent toute avancée significative du partenariat euro-méditerranéen*, surtout dans son volet politique et culturel. L'Europe en est consciente. C'est pour cela qu'elle doit multiplier les efforts pour aider à renouer le dialogue entre les adversaires afin de hâter une solution pacifique dans le respect des résolutions des Nations unies.

24. Aussi, il faut le reconnaître, *la solution équitable du conflit israélo-palestinien sera le test le plus éprouvant de la politique étrangère et de sécurité commune* au cours des prochaines années. Celle-ci sera jugée, entre autres, à l'aune des résultats obtenus dans la négociation israélo-arabe.

## II. Dialogue culturel et religions

25. Dans l'histoire pendulaire de la Méditerranée, faite de flux et de reflux, de conquêtes et de reconquêtes, de victoires et de défaites, *la religion a servi souvent d'étendard* pour galvaniser les énergies (guerres saintes), pour mobiliser les hommes et pour légitimer des entreprises de conquêtes, d'expansion, voire de reconquête ou de «retour à la terre ancestrale». Cela vaut tant pour l'islam (avec l'expansion islamique durant les premiers siècles) que pour le christianisme (avec les croisades, la conquête des Amériques et la colonisation) et pour le judaïsme (avec l'établissement de l'État d'Israël en Palestine). Mais s'il est vrai que la «religion» a joué et joue encore un rôle de légitimation et de mobilisation dans les guerres passées et présentes, il n'est pas moins vrai que la «violence religieuse» a été davantage alimentée par les clivages internes à chaque grande religion monothéiste que par les clivages **entre** religions. Les travaux des historiens et les analyses géopolitiques le démontrent à suffisance.

*Il faut dès lors qu'on cesse de parler à tort et à travers de «guerres des religions»* et en finir avec cette rhétorique fallacieuse et dangereuse sur la «violence structurelle» consubstantielle à telle ou telle religion. Il n'y a pas des «religions de l'épée» et des «religions de la paix». C'est l'usage que font les hommes des religions qui les rendent guerrières ou pacifiques. Ainsi affirmer que la religion chrétienne prône la tolérance, c'est faire preuve d'une grande amnésie historique. Affirmer, à l'inverse, que l'islam n'est que fanatisme et violence, c'est faire injure à des siècles où l'islam a brillé de toutes ses splendeurs par sa créativité et sa tolérance.

26. Cela dit, il est vrai qu'en Méditerranée on assiste, surtout depuis un quart de siècle, à la *recrudescence d'intégrismes religieux*, au sein de chacune des trois religions monothéistes. Cet extrémisme religieux traduit davantage la manipulation de la religion qu'un retour au religieux et est, de toute manière, l'enfant d'une époque marquée par les incertitudes, le déficit de sens et une mondialisation mal maîtrisée, ainsi que – en ce qui concerne les pays du sud de la Méditerranée – par les crises économiques, la clôture des systèmes politiques et les injustices flagrantes. C'est en agissant sur ces volets qu'on pourrait extirper l'extrémisme religieux à l'intérieur des sociétés qui le subissent et, par là, contribuer à une meilleure sécurité en Méditerranée. Et certainement pas en déclenchant des guerres meurtrières qui font le lit de nouveaux extrémismes.

*Le dialogue interreligieux peut s'avérer également utile*. Mais il ne peut apporter une contribution décisive que s'il s'accompagne d'un enseignement de l'histoire comparée des religions, d'une rupture avec les discours narcissiques et d'un dépassement des dogmatismes pour appréhender l'autre non comme un adversaire religieux, mais comme un partenaire dans la construction de la paix.

27. *L'Occident doit aussi consentir à un effort d'introspection*, et peut-être de remise en question, en cessant de ne voir que du «religieux» dans les soubresauts du monde, et permettre aux autres de participer à la production de sens. Cela requiert de récuser les idées superficielles de religions «éternelles» et «immobiles» et de déplacer le débat vers l'analyse sociologique, anthropologique et politique des sociétés – surtout musulmanes – dans la diversité de leurs trajectoires historiques. L'objectif étant de démontrer, par opposition aux tenants de l'école culturaliste, que non seulement les sociétés qui bordent le Sud et l'Est méditerranéen se transforment, mais qu'elles offrent aussi une multitude de formes d'articulation du religieux et de la politique qui permettent de dégager un espace politique, sinon de laïcité, du moins de sécularisation et donc de démocratie et de pluralisme.

28. Admettre que les sociétés bougent, c'est aussi reconnaître que l'islam interprété est vécu – *l'islam-contexte n'est pas toujours la copie conforme de l'islam-texte*, loin de là. D'ailleurs, historiquement les dogmes ont été réinterprétés en fonction de l'évolution des sociétés. Ainsi, l'Église de la période des croisades, de l'Inquisition et des bûchers n'est pas l'Église du Vatican II, de la prière œcuménique d'assises, etc. L'islam n'est pas une exception à la règle. Il est, lui aussi, capable de s'ouvrir aux idées nouvelles de liberté, d'égalité des sexes et de fraternité entre tous les peuples. Et c'est parce que cette modernisation interne est en route que les intégristes de tout poil tentent de la fourvoyer dans un combat d'arrière-garde pour préserver le «socle de la foi» et éviter la «déperdition morale» des sociétés musulmanes.

Considérer l'islam comme une «religion rétrograde» et les sociétés musulmanes comme des «sociétés figées» ainsi qu'on l'entend souvent, non seulement c'est faire preuve d'ignorance de l'histoire comparée des religions, mais c'est surtout refuser à l'islam toute capacité d'adaptation aux exigences du temps moderne. Or, l'islam s'adapte. Mais, comme le souligne un auteur arabe, sa capacité d'adaptation est fonction de la perception qu'il a de lui-même: lorsqu'il n'est pas frileux, ou revanchard, ou victime, l'islam est prompt à s'ouvrir sur les cultures voisines, à se nourrir d'elles et parfois à les ensemercer de sa faconde propre. De fait, chaque fois que l'islam a pris conscience du rôle éminemment positif qu'il pouvait jouer, sa collaboration à la culture universelle a été inventive, généreuse et sans arrière-pensées. Partant de ce principe qu'aucune culture ne produit de civilisation sans se frotter à d'autres cultures, l'islam s'améliore au contact de ceux qui le respectent. Et respecte ceux qui le respectent... A contrario, chaque fois qu'il s'est senti opprimé ou minoré, il s'est complètement raidi, laissant davantage parler ses réminiscences négatives et son amertume.

### III. Migrations et dialogue culturel

29. *Les migrations ont marqué l'histoire des peuples européens*. Poussés par la misère, le malheur ou l'esprit de conquérir de nouveaux horizons, les Européens ont essaimé dans les quatre coins de l'univers, notamment vers le Nouveau Monde. L'industrialisation du continent européen va inverser la tendance, surtout à partir de la fin du XIX<sup>e</sup> siècle. Des Polonais, puis des Italiens, des Espagnols, des Portugais et des Grecs ont quitté leur pays, à la recherche d'un gagne-pain dans les pays européens de vieille industrialisation. Bien que de religion chrétienne, ces immigrés ont dû faire l'apprentissage difficile de la vie dans d'autres sociétés. L'expatriation était vécue comme une «épreuve nécessaire», et leur vie d'étrangers n'était pas dépourvue de difficultés. Leur intégration n'a pas été, loin s'en faut, un long fleuve tranquille. Eux aussi ont éprouvé des angoisses et subi l'hostilité de nationaux. Le fait d'être européens et chrétiens ne les mettait pas à l'abri des préjugés: en France et ailleurs, on trouvait déjà dans les années 30 leur nombre excessif, qu'ils faisaient régner un climat de terreur, qu'ils n'étaient pas assimilables. Puis le temps a poursuivi son cours. Et ces anciens immigrés européens se sont fondus dans les sociétés d'accueil.

30. *L'immigration des pays musulmans vers l'Europe est plus tardive*: elle est liée à la décolonisation, à la phase de la reconstruction européenne après la Seconde Guerre mondiale et au tarissement des gisements traditionnels de l'immigration intraeuropéenne. Cette immigration peut être pakistanaise ou indienne au Royaume-Uni, turque et kurde en Allemagne, maghrébine en France, en Belgique ou aux Pays-Bas. Il est malaisé d'en estimer le nombre parce que beaucoup de ces immigrés ont été naturalisés ou sont nés citoyens européens et disparaissent des statistiques en tant qu'étrangers. Mais on peut avancer le chiffre de 15 millions sur une population européenne de 380 et, bientôt, avec les prochains élargissements, de 500 millions. Sur ces 15 millions, les Maghrébins – ou les personnes d'origine maghrébine – représenteraient un total de 5 à 6 millions.

31. Derrière ces chiffres, il y a un changement dans la nature même du phénomène migratoire, puisque, en cinquante ans, *on est passé d'une immigration de travail* (essentiellement masculine, concentrée dans les noyaux durs de l'industrie ou dans les mines de charbon et vécue comme temporaire) *à une migration d'installation*. Avec la fermeture des frontières européennes à de nouveaux flux à partir de 1973, et les premières mesures visant à intégrer les immigrés en situation régulière, on assiste à un changement qualitatif – féminisation, rajeunissement, visibilisation, augmentation du taux de dépendance – et quantitatif – le regroupement familial accroît le nombre des étrangers, tandis que se développe une *immigration clandestine* que rien ne semble endiguer: ni les contrôles maritimes, ni la police des frontières, ni les mesures techniques de surveillance des côtes, comme le système espagnol fort coûteux (66 millions d'euros) appelé «*sistema integral de vigilancia del estrecho*» (SIVE). Bref, le processus migratoire change de nature.

32. Si la question de l'immigration, surtout arabe et musulmane, nous interpelle ici, c'est en raison du fait qu'elle est devenue, surtout depuis 1973, «l'objet privilégié sur lequel s'opère la projection fantasmagorique des problèmes de sociétés européennes», projection qui décharge sur l'immigration les angoisses des Européens face aux difficultés du présent et aux incertitudes du futur. *L'Europe entière semble touchée par un réflexe de peur face à une immigration liée à l'islam*. C'était patent avant le 11 septembre et tous les sondages d'opinion l'attestaient. Ce l'est encore davantage après le 11 septembre où l'amalgame, au niveau populaire, entre islam et terrorisme s'enracine dans les esprits. En réalité, on a le sentiment que l'Europe se crispe devant la perspective d'un métissage accru et la perception d'une remise en cause de son identité et de ses valeurs.

33. Cette angoisse diffère en intensité d'un pays à l'autre, mais elle touche tous les pays confrontés à une immigration étrangère, surtout musulmane. Et elle se traduit par une réaction xénophobe qui n'épargne même pas les pays qui jadis étaient cités en exemple pour leur tolérance, comme l'Espagne ou les Pays-Bas. Mais, contrairement à la période précédente des migrations intereuropéennes, le racisme actuel n'est plus un fait marginal, mais un fait de société; il se focalise sur les différences supposées incompatibles et bénéficie d'expressions politiques grâce à des *partis d'extrême droite farouchement hostiles aux «étrangers»*.

34. Plus que d'autres «immigrés» (qui subissent également des discriminations), les musulmans et surtout *les Maghrébins de la deuxième et troisième génération sont particulièrement les victimes d'un racisme ordinaire «de la peau»*. Assimilés culturellement, les jeunes qui ne sont ni immigrés (puisque souvent nés en Europe) ni étrangers (puisque souvent naturalisés) se sentent exclus socialement. Comme si plus les barrières culturelles tombent, plus il faut inventer d'autres: le faciès (il n'est pas comme nous), l'origine (il n'est pas un Européen de souche), l'islam (c'est une menace pour notre identité). Ce refus de l'altérité musulmane s'accompagne chez la plupart des gens d'une méfiance, voire d'un mépris pour la religion des jeunes musulmans. Ces réactions, frileuses ou hostiles, conduisent ces jeunes, dans bien des cas, à se replier sur leur

culture et leur héritage, provoquant chez eux des «écarts d'identité» entre une communauté d'origine dont ils se détachent (pays d'origine) et une autre qui ne veut pas d'eux (pays d'implantation).

35. On voit bien que, dans le dialogue culturel entre l'UE et le pourtour méditerranéen, *l'immigration constitue un enjeu majeur parce qu'elle interpelle le noyau dur de l'identité européenne et révèle le rapport problématique de l'UE à l'altérité la plus proche*. La prolifération de partis populistes et xénophobes, dont certains réalisent de bons scores électoraux, traduit les angoisses devant le métissage croissant des sociétés et la consolidation de la présence «musulmane» au cœur des cités européennes. Or, l'Europe ne peut s'enfermer sur ses peurs. En effet, le rapport de l'Europe avec ses banlieues immédiates conditionne son rapport avec ses banlieues lointaines et vice versa. Une attitude plus positive serait de s'efforcer à faire participer à la vie collective toutes les populations régulièrement installées, quelles que soient leurs origines et leurs pratiques religieuses. L'intégration est une nécessité politique, sociale et culturelle pour éviter que se constituent des ghettos ethniques de pauvreté d'exclusion et de sous-citoyenneté. Elle est surtout une nécessité démocratique, car elle postule que, malgré la diversité de leurs origines, traditions et croyances, les hommes peuvent vivre ensemble sur un même territoire en respectant des normes communes.

36. L'intégration signifie aussi qu'on cesse d'agiter des épouvantails: l'«invasion» de l'Europe par les pauvres du tiers-monde ou l'«islamisation» de l'Europe. Car, en réalité, ce n'est pas à une islamisation de l'Europe, mais bien au *développement d'un islam européen*, avec des caractéristiques propres qui le distingueraient de l'islam tel qu'il est vécu en terre musulmane, que l'on assiste. D'abord, il se construit en dehors des pays et des cultures d'origine, comme une religion minoritaire, dont les adeptes ont fait le deuil du retour et le choix d'une installation définitive et, de surcroît, demandent à être considérés comme des citoyens à part entière et non comme des citoyens à part. Ensuite, cette installation pérenne dans un espace laïque européen transforme graduellement le système de pensée des musulmans et leurs comportements, notamment en ce qui concerne leurs rapports aux sociétés d'accueil et leur rapport à la religiosité.

37. Ainsi s'esquisse subrepticement un *rapprochement entre l'islam et le christianisme* tel qu'il est vécu en Occident, en ce sens que l'islam vécu en Occident met davantage l'accent sur la foi intériorisée et l'éthique, en dehors de toute contrainte sociale, de toute police religieuse ou des coercitions communautaires.

38. *Les pays de l'UE peuvent encourager davantage ces convergences* qui relèvent de l'expérience religieuse dans un milieu définitivement laïque, ne fût-ce que par la dénonciation des amalgames entre l'islam, en tant que religion, et les islamismes en tant que courants idéologico-politiques, ou même les néo-fondamentalismes qui réduisent l'islam aux rituels et aux interdits. Une attitude accueillante moins frileuse, plus généreuse et rompant avec les discours stériles sur l'«incapacité des musulmans à s'intégrer», des émissions grand public consacrées à la vie des musulmans d'Europe, un enseignement sur l'islam dans les écoles et les universités, tout cela permettrait un apaisement des relations entre les communautés musulmanes et les sociétés d'accueil et faciliterait grandement l'intégration des musulmans dans l'espace public européen. Ce serait une grande réussite de l'Europe et une grande chance pour l'islam qui se déploie dans un espace de liberté.

39. Si nous insistons sur une meilleure intégration des musulmans dans l'espace européen, c'est parce que *nous pressentons le danger que peuvent constituer les replis communautaristes*, qui, sous couvert de respect des identités, risquent de déboucher sur des sociétés tribalisées et des sociétés-mosaïques, où, par une sorte de spatialisation des différences, on finirait par avoir des quartiers, voire même des écoles ethniques. Ce n'est guère une perspective réjouissante ni à l'échelle des sociétés européennes, ni même à celle de la Méditerranée tout entière.

#### IV. Pour une démarche humaniste

40. *Tous les peuples se construisent un rapport au passé et à l'espace.* La fonction de la mémoire (rapport au passé) est précisément de retravailler le passé pour y sélectionner les événements, glorieux ou traumatiques, qui servent de matériau de construction identitaire, tandis que le territoire (rapport à l'espace) apparaît comme fondateur de l'ordre politique moderne, autour des notions comme la «nation» ou la «souveraineté». Et comme le répètent les géopoliticiens contemporains, dans la mémoire sélectionnée, souvent déformée par le pouvoir, le territoire est la référence à partir de laquelle l'imaginaire collectif élabore une représentation identitaire. Ainsi, en tant que représentation, l'identité est une construction sociale.

41. Elle renvoie aux rapports au passé et au territoire, mais aussi à l'altérité. Cela implique que *toute définition identitaire est aussi une démarcation* (nous, c'est nous) qui, malheureusement, s'est transformée souvent, au contact d'autres mémoires, espaces et identités, en une affirmation arrogante de supériorité de soi par rapport à l'autre. Les trois monothéismes, nés au Proche-Orient, ont largement contribué par leur monopolisation de la vérité, à l'exclusion de l'autre, renforçant des «identités meurtrières», pour reprendre le titre d'un livre d'Amin Maalouf.

42. Et pourtant, peut-on nier aujourd'hui que *les individus comme les sociétés développent des «identités complexes et multiples»* sous l'effet conjugué de l'échange, de l'immigration, de la mondialisation? Les réflexes de repli, qu'on constate sur les deux rives de la Méditerranée, ne traduisent-ils pas, en grande partie, la peur ressentie face aux «menaces» du métissage induit par la circulation des idées, des produits et surtout des hommes? Les notions, telles que «choc de civilisations» ou celle, plus pernicieuse encore, d'«axe du bien et du mal», ne visent-elles pas à recréer des lignes de fractures et des frontières balisées entre «eux et nous», c'est-à-dire un découpage artificiel des frontières culturelles, alors que, par définition, les cultures sont toujours hybrides, métissées? Que des partis d'extrême droite, ou même des groupes intégristes, apportent leur adhésion à de telles divagations étonne à peine, car, pour tous ces «oiseaux de mauvais augure», l'identité n'est pas vue simplement comme un sentiment d'appartenance, mais aussi comme une bannière sous laquelle on se combat.

43. Il faut avoir tous ces éléments à l'esprit pour comprendre la dégradation du climat culturel entre les deux rives de la Méditerranée et déployer toutes les énergies pour une nouvelle pédagogie de la concorde et de la compréhension. Sans un retour à une approche humaniste, la situation ne pourra qu'empirer, conduisant à des postures d'hostilité. Cela ne veut point dire qu'il faille se voiler la face et gommer d'un trait tous les malentendus légués par une longue histoire. Mais *la démarche humaniste exige qu'on arrête, de tous les côtés, de «fabriquer» des ennemis imaginaires* et de démoniser des sociétés entières, voire même des «religions», en leur attribuant des responsabilités collectives pour les agissements répréhensibles de certains de leurs membres et adeptes.

44. Ainsi, débusquer les stéréotypes, dénoncer les dérives de comportement ou de langage, *extirper l'extrémisme de nos sociétés, tout cela doit être un combat à mener en commun.* Cela nécessite au nord de la Méditerranée, dans l'Europe entière, une autre approche à l'altérité, et au sud de la Méditerranée, une autre gestion du passé, des ouvertures démocratiques et une nouvelle gouvernance pour affronter les défis du troisième millénaire.

45. Tout cela nous amène à ces trois dernières réflexions: a) la première est que, *s'il n'y a pas de développement sans enracinement, il n'y a pas non plus de civilisation sans ouverture*; b) la deuxième, *«la Méditerranée est trop étroite pour séparer et trop large pour confondre»*; c) la troisième, nous l'empruntons à Octavio Paz: *«Toute culture naît du mélange, de la rencontre, des chocs. À l'inverse, c'est de l'isolement que meurent les civilisations.»*

## Citizenship, social change and the EU constitution

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On 8 July 2004, the European Court of Justice sought to clarify the relationship of citizens of the Union both in relation to one another and in relation to the 25 Member States and their responsibilities. At the core of the European Court of Justice's judgment is the principle of equality between citizens <sup>(107)</sup>. In a Union of 25 Member States where the citizens of the Union enjoy their status as such only by virtue of their nationality of a Member State (though an increasing number of them enjoy the nationality of more than one Member State) how can the essential element of citizenship in liberal democracies – that of equality – find its expression? In this contribution I will examine some of the issues that are at the heart of this question, which has taken on a new importance with the adoption of the EU Constitution by the Council on 18 June 2004.

The choice of the State to allocate citizenship to one individual and to withhold it from another is an essential element of State sovereignty. It is a means of defining belonging and exclusion. The creation in 1993 of citizenship of the Union, premised on nationality of a Member State, brought an important new dimension to the essence of the concepts. The definition of what the European Union is engages the relationship of organisation, territory and individuals. To define the emerging Constitution of the European Union in the field of citizenship, justice and security is to seek the parameters of an emerging State. The definition of State, whether by Weber <sup>(108)</sup>, Giddens <sup>(109)</sup> or Tilly <sup>(110)</sup>, involves a territory, people and a political class/administration exercising authority. Just as deliberate uncertainty surrounds the territorial extent of the European Union <sup>(111)</sup> so also it touches its peoples. Who are the people and for what purposes or in which circumstances? The matrix between territory and people is implicit in the differentiation between citizens and immigrants. The legal framework within which these questions find expression is treaty versus constitution: when does a treaty become a constitution? A treaty as an inter-State act may give rise to rights to individuals but this is a by-product of the settlement of relations between States. A constitution, as part of the rules of governance, sets out the compromise of rights and duties between the people and those exercising authority. Giving precision to rights of individuals is central to constitution-making. In the European Union there is a shifting territory where a treaty has many constitutional characteristics (including the creation of a citizenship) but continues to call itself a treaty, and a charter which sets out rights and duties is a format which links the territory of Europe's foremost human rights instrument, the European Convention on Human Rights (ECHR) and the individual rights space of the treaty. The right to legal security is central to constitution-making for the citizen. It is one of the

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<sup>(107)</sup> C-502/01 and C-31/02 *Gaumain-Cerri and Barth*, judgment of the European Court of Justice, 8 July 2004.

<sup>(108)</sup> M. Weber, *Economy and society*, Vol. 1, Roth G. & Wittich C. (ed.), University of California Press: Berkeley, 1978.

<sup>(109)</sup> A. Giddens, 'A contemporary critique of historical materialism', Vol. 2, *The nation-State and violence*, University of California Press: Berkeley and Los Angeles, 1985.

<sup>(110)</sup> C. Tilly, *The formation of nation States in western Europe*, Princeton University Press: Princeton, 1975.

<sup>(111)</sup> For example, one finds this ambivalence in the long-standing uncertainty about the status of Gibraltar or the application for membership of Turkey or indeed the questions about enlargement towards the east – how many States are coming in and when?

central objects of constitutions – how the citizen controls or interacts with those in power and the limitations of powers in their regard. The (default) mechanism to achieve this legal security is through the administration of justice to which the individual as citizen (as opposed to immigrant or non-citizen) must be entitled.

### **A developing Constitution and equality**

Equality is at the centre of citizenship of the Union. It finds its key expression in Article 12 EC – the prohibition of discrimination on the basis of nationality. Notwithstanding the fact that the prohibition of discrimination on the basis of nationality also appears in separate chapters of the EC Treaty, the European Court of Justice has held that Article 12 EC is applicable as the long stop against discrimination. In its July 2004 formulation of the concept, the European Court of Justice stated: 'The status of citizenship enables nationals of the Member States who find themselves in the same situation to enjoy within the scope of the Treaty the same treatment in law, subject to such exceptions as are expressly provided for...' <sup>(112)</sup>. The European Court of Justice was asked to determine whether the difference of the place of residence of citizens of the Union, on one side or the other of an EU internal border, was a factor which objectively changed the nature of the situation so as to exclude the equality principle. The European Court of Justice found that 'the condition as to residency of [certain persons] appears to afford different treatment to comparable situations, rather than to constitute a factor objectively establishing a difference in their situations and thus justifying such different treatment, and therefore constitutes discrimination prohibited by Community law' <sup>(113)</sup>. At the heart of the case was the right of a citizen to social benefits on a non-discriminatory basis. A Member State had refused social benefits to citizens of the Union (who were not nationals of the Member State) on the basis that the relative in respect of whom the benefits were payable lived on the wrong side of the border. The example illustrates the intertwined nature of citizenship, territory and the right to equality in the provision of social resources. It also shows the great reluctance of (some) Member States to come to terms with the transformation of the EU to an area within which the meaning of citizenship and its essential element, equality, are subject to new social settlements.

The British social scientist, T. H. Marshall, examines the constituent elements of belonging which are central to the idea of citizenship. His schema provides an interesting point of departure in this context. Marshall's citizenship is composed of three distinct elements: (a) civil: the rights necessary for individual freedom – liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts and the right to justice; (b) political: the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body; (c) social: from 'the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society' <sup>(114)</sup>. The interplay of social rights and equality is central.

Marshall's elements are incremental in their acquisition, beginning with the securing of civil rights by the people and finishing with social rights, the most disputed as the events of Marshall's time revealed. If a comparison is made with citizenship of the Union, leaving aside the fact that key rights attached to it accrue only in the situation of migration and not within the State of nationality, the first step towards the acquisition of citizenship rights in the EC

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<sup>(112)</sup> Para. 34 C-502/01 and C-31/02 *Gaumain-Cerri and Barth*, judgment of the European Court of Justice, 8 July 2004.

<sup>(113)</sup> Para. 35 C-502/01 and C-31/02 *Gaumain-Cerri and Barth*, judgment of the European Court of Justice, 8 July 2004.

<sup>(114)</sup> T. H. Marshall, *Citizenship and social class*, Doubleday, New York, 1964, p. 11.

Treaty was in fact social, the right to equal treatment in social security, the corollary right to freedom of movement in the Treaty (Article 40 EC) <sup>(115)</sup>.

The relationship of citizenship with freedom, in the form of freedom of movement, is essential to EU law. From the establishment of the European Economic Community with the entry into force of the EEC Treaty (as it then was), freedom of movement of persons was among the objectives <sup>(116)</sup>. The object of abolition of obstacles to the free movement of persons, was given particularity in Part III, Title III, Articles 39–49 <sup>(117)</sup>. Article 39 EC provides for the abolition of obstacles to the free movement of workers among the Member States. It is subject to two main limitations: first, on the grounds of public policy, public security and public health; second, Member States are permitted to restrict access to their civil services to own nationals. Both of these exclusions have been restrictively interpreted by the Court of Justice, a subject I will return to slightly later. Article 43 provides for a right to non-discrimination for the self-employed – the right of establishment. This incorporates a right to move for the purpose of self-employment to another Member State and to reside there. The right is in terms of non-discrimination and abolition of obstacles to the exercise of economic activities as self-employed in different Member States. Among the main obstacles are differences in regulation of professions and trades. All Member States have complex systems of regulation operated by State authorities, quasi-State authorities and professional bodies. While most of the rules which excluded non-nationals directly on grounds of nationality have been abolished, indirect discrimination is still prevalent in the form of rules which fail to recognise skills and experience obtained in other Member States <sup>(118)</sup>. Finally, Article 49 provides a right to provide services and, through secondary legislation and the interpretation of the Court, it also incorporates a right for persons to move to receive services. This right is designed to recognise that of individuals to go to other Member States for economic purposes without the intention of setting up an infrastructure or staying a long period of time.

EU free movement rights were legislatively 'complete' by 1968, though giving effect to those rights was a longer process. The transitional period for the achievement of the rights ended with 1968. At that point the free movement of persons for economic purposes was to have been achieved. It is worth noting that the right to move as included in the original EC Treaty was designed for those exercising some sort of economic activity. Individuals are treated as economic actors only and have rights as such. The humanitarian reasons for permitting persons to move across borders, asylum seekers, refugees and displaced persons, find no direct place in the Treaty as originally adopted. They will only be inserted later with the Amsterdam Treaty. Rather it is the right to work which is central to a right to cross a border. The type of economic activity is wide, covering most situations, in particular as developed by the European Court of Justice's jurisprudence.

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<sup>(115)</sup> The right to own property, part of Marshall's first right in the acquisition of citizenship, is indicative in EC law not least as it was rejected by that Member State where the concept of citizenship of the Union is most controversial: Denmark. By a protocol attached to the EC Treaty by the Maastricht Treaty in 1993, Denmark has reserved the right to refuse the possibility to nationals of other Member States to purchase land there (according to geographic limitations and limited to the form of second homes).

<sup>(116)</sup> Article 3(c) EC.

<sup>(117)</sup> With the entry into force of the Amsterdam Treaty, the numbering of provisions of the Treaty changed. In this text I will only use the new numbering. However, where quoting texts which use the old numbering I will put the new number in square brackets next to the old one.

<sup>(118)</sup> C-110/01 *Tennah-Durez* eloquently demonstrates this. The individual had obtained her first medical degree in Algeria but had subsequently received training in France and a further qualification in Belgium where her medical degrees were recognised. When she sought to work in France, the French authorities refused to recognise her qualifications on the basis that the initial degree had been obtained in Algeria, notwithstanding the fact that she had completed part of her subsequent training in France.



In effect, a transformation of the relationship of the individual and the State in a core element of citizenship was taking place. The space which is being created is one within which rights of entry, economic activity and residence are created for a class of persons defined on the basis of nationality. This is a substantial and important departure from the position in international law where only humanitarian grounds give rise to a duty on States to admit non-nationals. However, the limitations on the right of entry place it still far from a citizenship right within the meaning of the ECHR. To complete the rights of movement on the territory of the Union which accrue to nationals of the Member States, the 1990 directives on the right of residence for pensioners (90/365), the economically inactive (90/364) and students (93/96) were adopted extending movement rights beyond economic capacities. In each case the individual must be able to support him or herself (to the level of the national social assistance benefits) and have health insurance. A final step was taken with the adoption of a directive on the right of movement of citizens of the Union <sup>(119)</sup>.

The right to move and reside within the territory as an equality right within nationality is tempered by an exception: the right of the Member States to disapply the non-discrimination duty in exclusion and expulsion under strict condition.

### **Permanence and the exceptions**

The right to move and reside applies to all Community nationals (and their family members) who move from their home State to another for an economic purpose – i.e. workers, the self-employed, service providers and recipients, or those in an economically inactive capacity, such as students, pensioners or the economically self-sufficient. The seamlessness of these categories, i.e. the inability of a national of a Member State to fall between them (other than on grounds of destitution), has been confirmed in the new directive on the right of citizens of the Union to move and reside freely in the EU. At Preamble 3 the directive states 'Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence' <sup>(120)</sup>.

In the directive, the rights of citizens of the Union to protection against expulsion have been substantially strengthened in relation to the regime which was in place previously (under Directive 64/221/EEC). Under the new directive, not only are citizens of the Union protected, but also their family members, be they citizens of the Union or third-country nationals, gain protection against expulsion. Articles 12 and 13 of the directive for the first time protect family members from expulsion in the event of departure of the principal [family member] from the host Member State and in the event of marriage breakdown. Citizens of the Union and their family members of any nationality gain a right of permanent residence under Article 16 of the directive once they have been resident legally for a continuous period of five years in the host Member State. They no longer need to remain either economically active or self-sufficient to retain this right. The inclusion of this provision in the directive raises some questions about whether citizens of the Union, in accordance with the jurisprudence of the European Court of Justice, have a right of residence which is protected, notwithstanding the fact that they may not have fulfilled the five-year residence requirement or the financial conditions.

Chapter VI of the directive sets out the grounds on which the Member States may interfere with the entry or residence of a citizen of the Union. It can go no further than the restrictions permissible under the Treaty – that is to say, public policy, public security and public health.

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<sup>(119)</sup> Directive 2004/38/EC.

<sup>(120)</sup> Ibid.

Most importantly, in no case can exclusion or expulsion be justified on economic grounds. The Member States are required, by Article 28, to give consideration of the personal circumstances of the individual before seeking to expel him or her on the basis of public policy or security. A sliding scale has been introduced by the directive as an innovation in comparison with its predecessor where a citizen of the Union has acquired a permanent residence status. The expulsion of such a citizen of the Union may only be taken on 'serious' grounds of public policy or public security. Further, after 10 years of residence on the territory (or in respect of minor children), expulsion may only be ordered on 'imperative' grounds of public security.

This legislative development, which apparently increases the rights of citizens of the Union, must be balanced against the interpretation which the European Court of Justice has already given to the provisos of public policy, public security and public health as grounds for exclusion and expulsion. As early as the 1970s, the European Court of Justice had already signalled the exceptional nature of expulsion as regards a citizen of the Union <sup>(121)</sup>. Here the European Court of Justice has acknowledged the discriminatory nature of expulsion – the proviso permits Member States to adopt, in respect of nationals of other Member States, measures which they cannot apply to their own nationals, inasmuch as they have no authority to expel the latter from the national territory or to deny them access to it <sup>(122)</sup>. However, as a derogation from the right to free movement, the European Court of Justice has interpreted the derogations strictly on the ground that their scope must not be determined unilaterally by any Member State. The European Court of Justice accepted that there is no uniform scale of values as regards the assessment of the conduct which may be considered as contrary to public policy but it must be of a sufficiently serious nature that the Member State adopts repressive measures or other genuine and effective measures to combat the conduct when carried out by nationals of the State itself <sup>(123)</sup>.

Inherent in this assessment is both the principle and the breach of equality among citizens. Some citizens are subject to certain coercive measures to which other citizens are exempt even where the assessment of the legitimacy of the measures is made on the basis of the application of coercive measures against all persons who carry out the undesirable activity. The importance of citizenship and the principle of equality as inherent to citizenship finds much support in the rhetoric of the EU but less reality in the legislation.

### **The citizenship rights**

Following the 1993 changes to the Treaties, citizenship of the Union was inserted as a new principle. Articles 12–18 EC set out the rights of citizens of the Union:

- (1) to move and reside within the territory of the Union subject to the conditions and limitations laid down in the Treaty;
- (2) to vote and stand as a candidate at municipal elections in any Member State in which he or she resides excluding that of his or her nationality;
- (3) to vote and stand as a candidate at European Parliament elections in any Member State in which he or she resides excluding that of his or her nationality;

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<sup>(121)</sup> 41/71 *Van Duyn* [1974] ECR 1337.

<sup>(122)</sup> 36/75 *Rutili* [1975] ECR 1219.

<sup>(123)</sup> 115/116/81 *Adoui* [1982] ECR 1665.

- (4) the right to protection by diplomatic or consular authorities of any Member State other than that of his or her nationality when in the territory of a third country where his or her national authorities are not represented;
- (5) the right to petition the European Parliament;
- (6) the right to apply to the European Ombudsman.

With the exception of the last two rights which are in fact not limited to citizens of the Union, all the other rights are rights of (im)migrants. They apply only where the individual is outside his or her country of nationality. The right to move and reside is not taken further than as set out in the rights on the free movement of persons. It is still subject to the limitations of exclusion from public employment and the territory on the conditions laid out. There is no extension of the right to move and reside in the chapter on citizenship as would be consistent with the ECHR definition of the rights of nationals. In the Marshallian analysis of citizenship as bundles of rights, the establishment of citizenship of the Union creates political rights but they are rights which apply only outside the Member State of nationality. Citizenship of the Union resembles a glove turned inside out; the rights to be encased within the territory as the settlement of constitutional rights in fact is turned outwards outside the State of nationality into the territory under dispute.

Political rights both at municipal and European Parliament levels only apply to citizens when they are outside their State of nationality; further they apply at only two levels. The level of national elections is excluded although it is this level which involves participation in the European Council, which adopts virtually all legislation at the European Union level (with the consent of the European Parliament by and large). Similarly, consular protection only applies where the individual is not only outside his or her State of nationality but outside the Union altogether.

EU identity rights have been fleshed out by the European Court of Justice in the cases stretching back to the 1960s and 1970s. The strong position taken by the European Court of Justice to limit the power of the Member States to expel or exclude nationals of other Member States on the basis of the public policy, public security and public health provisos has been of the greatest value to citizens. These are the rights which citizens have pursued before the courts. The quest for justice has been one in which the interest of the individual has aligned with that of the European Union in seeking to limit the discretionary power of the Member States to treat Community nationals as aliens. Here the European Court of Justice has (almost) consistently held in favour of the individual against the State. The result of this approach to individual rights is not only an expansion of the power of the individual vis-à-vis the State but an expansion of the rights of definition and control at the EU level vis-à-vis the State. The framework within which the struggle between the Member States and the Union regarding the definition and meaning of the Treaty takes place is the rule of law <sup>(124)</sup>. The role of the individual in that framework is in some sense an activator – by seeking to establish rights, the individual becomes a medium through which the struggle for control of definitions and powers comes before the Court of Justice as the dispute resolution mechanism <sup>(125)</sup>.

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<sup>(124)</sup> Perhaps most clearly this is expressed in the numerous cases which have come before the Court regarding the competences of the Community and the Member States but this is beyond the scope of this article.

<sup>(125)</sup> There is of course the power for the Commission to take enforcement action against the Member States but in practice this is mostly done once the struggle has been resolved and it is only a matter of obedience on the part of the Member State which is at stake.

Within the Union, justice for the citizen is perceived as being found in supranational judicial control which limits the variations in treatment which occur at Member State level. At Member State level, however, supranational judicial control is seen as a mechanism through which power over control of identity, border and order is lost from the national level. The first field in which the interplay between the individual, Court of Justice and Member State evolved was free movement of persons and the power of the State at national level to determine security of entry and residence (see above on the right to exclude and expel) <sup>(126)</sup>. The elimination of supranational judicial control and its gradual reintroduction into the field is the story of the development of the third pillar in borders, immigration and asylum, leading to Article 68 EC which permits the Court of Justice jurisdiction over questions of borders and their crossing but with a new term of exclusion, 'internal security'.

However, until the inversion of the rights of citizenship of the Union is reversed there is unlikely to be an incremental development of the concept into one which fulfils even the ECHR norms. A further difficulty rests on the question of the relationship of citizenship with civil liberties. The difference between civil liberties and human rights has not been fully explored in the European Union context. However, the use of the term 'fundamental rights' in both the Charter of that name, and now that section of the Constitution which incorporates the Charter, indicates the intersection of the two concepts.

## CONSTITUTIONAL RIGHTS AND THE CITIZEN

Human rights, as the result of international treaties, find their foundation in international negotiations between States. Civil liberties are more likely to be found in national constitutions and laws within States – they express national settlements around the use of power within the State and the right of the individual as regards the use of power both where power is directly exercised by the State authorities and where the State is arbiter regarding the use of power by individuals among themselves. It is worth noting that by deploying the term 'fundamental rights' both of these concepts of rights are included. If one considers the contents of the EU Charter, it is clear that it includes not only the rights which citizens of the Union had acquired under EU law from the foundation of the EEC until now but also human rights, in particular those contained in the ECHR. These form the two main sources of rights in the Constitution's charter.

An analysis of the beneficiaries of rights in the Charter reveals an interesting dimension – the vast majority of the rights contained in the EU Constitution apply to all persons; they are not limited to citizens of the Union. In fact, there are five categories starting with the general category of everyone. This category appears to be the equivalent of the jurisdiction of the ECHR contained in Article 1 – everyone within the jurisdiction of the signatory States <sup>(127)</sup>. The rights which accrue to the groups are listed below.

### *Everyone*

(1) Human dignity (Article 1)

(2) The right to life (and protection from the death penalty) (Article 2); source: Article 2 ECHR and Protocols 6 and 13 ECHR

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<sup>(126)</sup> Van Duyn, 1974; Bonsignore, 1975; Rutili, 1976; Royer, 1976; Sagulo, 1977; Bouchereau, 1977; Calfa, 1999.

<sup>(127)</sup> I have noted, where the source of the right is clearly from the ECHR, which provision is applicable.

- (3) Respect for physical and mental integrity (Article 3)
- (4) The prohibition on torture, inhuman or degrading treatment or punishment (Article 4); source: Article 3 ECHR
- (5) Slavery and servitude; compulsory labour and trafficking human beings (Article 5); source: Article 4 ECHR
- (6) Liberty and security of person (Article 6); source: Article 5 ECHR
- (7) Respect for private and family life (Article 7); source: Article 8 ECHR
- (8) Protection of personal data (Article 8)
- (9) The right to marry and found a family (Article 9); source: Article 12 ECHR
- (10) Freedom of thought, conscience and religion (Article 10); source: Article 9 ECHR
- (11) Freedom of expression and information (Article 11); source: Article 10 ECHR
- (12) Freedom of assembly and of association (Article 12); source: Article 11 ECHR
- (13) The right to education (Article 14); source: Article 2 Protocol 1 ECHR
- (14) The right to work and choose an occupation (Article 15)
- (15) The right to property (Article 17); source: Article 1 Protocol 1 ECHR
- (16) The right to asylum (Article 18) <sup>(126)</sup>
- (17) Protection from removal, expulsion or extradition to a State where there is a serious risk of the application of the death penalty, torture or other inhuman or degrading treatment or punishment (Article 19)
- (18) Equality before the law (Article 20)
- (19) The right to non-discrimination on enumerated grounds (Article 21); source: inter alia Article 14 ECHR
- (20) Respect of cultural, religious and linguistic diversity (Article 22)
- (21) Equality between men and women (Article 23); source: inter alia Article 14 ECHR
- (22) The rights of the child (Article 24)
- (23) The rights of the elderly (Article 25)
- (24) The rights of persons with disabilities (Article 26)

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<sup>(126)</sup> There is no specific reference to the Aznar Protocol to the EC Treaty which seeks to limit the right of asylum to third-country nationals and to exclude citizens of the Union from the right to asylum.

- (25) The rights of collective bargaining and action (Article 28)
- (26) Access to placement services (Article 29)
- (27) Respect for social security benefits in accordance with national law (Article 34)
- (28) Social and housing assistance (Article 34)
- (29) Access to preventive healthcare (Article 35)
- (30) Access to service of general economic interest (Article 36)
- (31) Environmental protection (Article 37)
- (32) Consumer protection (Article 38)
- (33) The right to good administration including a right to be heard; access to the file and a duty for the administration to give reasons; the right to damages for loss caused by the institutions; the right to use any of the Constitution languages (Article 41)
- (34) The right to an effective remedy, to a fair and public hearing within a reasonable time and to legal aid (Article 47); source: Article 14 ECHR
- (35) The presumption of innocence (Article 48); source: Article 6 ECHR
- (36) The right to protection against retrospective laws (Article 49); source: Article 7 ECHR
- (37) Protection against double punishment for the same act (Article 50); source: Article 4 Protocol 7 ECHR

*All workers*

- (1) The right to working conditions which respect health, safety and dignity (Article 31)
- (2) The right to limitation of maximum working hours, periods of rest and annual paid leave (Article 31)

*Third-country nationals lawfully in the EU*

- (1) Where authorised to work in the territories of the Member States, entitled to working conditions equivalent to those of citizens of the Union (Article 15)
- (2) Where moving legally within the EU, the right to social security benefits and advantages in accordance with national laws and practices (Article 34)
- (3) The possibility to be granted the right to move and reside anywhere in the Union (Article 45)

*Any person residing in the EU (including citizens, third-country nationals and legal persons)*

- (1) The right to access to documents (Article 42)
- (2) The right to refer to the European Ombudsman (Article 43)
- (3) The right to petition the European Parliament (Article 44)

*Citizens' rights*

- (1) Political parties at the Union level (Article 12)
- (2) The freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State
- (3) The right to non-discrimination on the grounds of nationality (Article 21)
- (4) The right to vote and stand as a candidate in elections to the European Parliament (Article 39)
- (5) The right to vote and stand as a candidate in elections at municipal level (Article 40)
- (6) The right to move and reside anywhere in the Union (Article 45)
- (7) The right to protection by diplomatic or consular authorities in third countries (Article 46)

These are the categories of natural persons who are recognised as rights holders in the Constitution's charter. The vast majority of rights are written in such a way as to permit all persons to benefit from them. Those rights which are specifically limited to citizens also benefit from clarity as to the beneficiary. Those rights which are limited to workers may depend on the interpretation which the European Court of Justice has given to the term 'worker': a person who for a period of time provides services in return for remuneration in a relationship of subordination<sup>(129)</sup>. The two intermediate categories – those of third-country nationals lawfully resident in the Union and persons resident in the EU – are less clear. How the definitions will be interpreted and by whom will only become clear with time. The engagement of national courts and ultimately the European Court of Justice will be central to this process.

## **Conclusions**

A key force in social change is the quest of individuals who seek new settlements both with one another and with the State authorities; these settlements reflect the needs and aspirations of groups. The reconfiguration of the EU reflects the enormous social changes which have swept Europe over the past 50 years. More urgently, the changes of the past 15 years have brought about a fundamental redefinition of those entitled to participate in the determination of the EU social fabric. The enlargement of the EU from 15 to 25 Member States on 1 May 2004 appears likely to be only one staging post in this journey of Europe.

This social change has been accompanied by a dramatic transformation in the content and meaning of citizenship which has taken place over a 20-year period. From the introduction of

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<sup>(129)</sup> See, for instance, 53/81 *Levin* [1982] ECR 1035.

the concept of citizenship of the Union, to its numerical doubling through both the reunification of Germany and enlargement of the Union, the concept is highly dynamic. As I have discussed in this contribution, among the original features of citizenship of the Union is the fact that all the substantial rights that the individual gains from having the citizenship are rights which he or she can only access when he or she goes abroad and becomes a migrant in another Member State. Thus citizenship of the Union has been designed as a system of rights protection which straddles the traditional idea of the relationship of the citizen with the State as one of an embrace of the essence of equality, and the concept of an immigrant as a person excluded from the relationship of the State and its citizen which is designed to ensure the equality of citizens and is thus subject to the vagaries of discrimination. Citizenship of the Union appears designed to force the Member States to provide equality for non-nationals (those who are designated citizens of the Union but are nationals of another Member State) while at the same time legitimising discrimination as regards security of residence and participation in the higher levels of the State civil service.

The current position of the citizen of the Union as half 'real' citizen and half alien finds expression in the recently adopted directive on the rights of citizens of the Union to move and reside freely within the territory of the Member States (Directive 2004/38/EC). The title itself is revealing – the citizens of the Union move and reside not in the Union itself but in the territories of the Member States! While the citizens of the Union are provided with wide rights of movement and residence, they are nonetheless subject to the threat of expulsion and exclusion, both threats which are prohibited in international law in respect of 'real' citizens. The resistance of the Member States to relinquishing coercive powers over citizens of the Union is the clearest evidence of their determination to continue to discriminate between their 'own' citizens and the Union's citizens.

The EU Constitution provides a new framework within which the rights of citizens of the Union must be understood. For the first time, a charter of rights has been inserted with the intention that it should be legally binding on the Member States and accessible to the citizens of the Union. The Constitution also straddles two quite different projects, one an international treaty which regulates the relations of sovereign States, the other a constitution which engages the individual citizen in the rules around the consolidation of power, those entitled to exercise powers and the limits placed thereon. In so doing, the Constitution looks in two directions at once, on the one hand acknowledging the social changes which are occurring within the Union and the demands of the citizens for more durable and supranational rights, and on the other hand deferring to State sovereignty as a 'genuine' fiction and the supposed monopoly of the nation State over the identity of those to whom it belongs.

The EU Constitution is now commencing its long path to ratification. Only once it has arrived at the far end will the next step begin – the interpretation of its contents. Here the struggle of the citizen both inside his or her Member State and in a host Member State in the acquisition of rights, and most importantly the right of equality, will take on a new dimension.





# W O R K S H O P 4

The role of the media in the dialogue  
(Impact of the media: cross-cultural perceptions)

# A T E L I E R 4

Le rôle des médias dans le dialogue  
(L'impact des médias dans l'imaginaire croisé)

Résumé de l'intervention de

**M. Charles-Ferdinand Nothomb**

Ministre d'État belge

Président de l'institut MEDEA de recherche sur la coopération méditerranéenne  
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Président du groupe de travail MEDEA à Bruxelles

Reprenant à notre compte l'idée qu'il n'y a pas de danger de choc des civilisations, mais un immense choc des ignorances, il faut évidemment souligner que les études de fond, article de vulgarisation, livres, colloques ou émissions explicatives à la radio ou à la télévision, sont une goutte d'eau dans la mer des images «documents imagés» diffusées chaque jour à des centaines de millions de téléspectateurs montrant la violence, le résultat de la violence, ou des incitations à la violence, à l'occasion des conflits du Moyen-Orient, ou des actes terroristes revendiqués ou imputés au monde occidental, dans lesquels se retrouve impliquée l'Europe, ou au monde arabo-musulman qui est infiniment plus vaste, et plus complexe que les deux foyers principaux de conflit au Moyen-Orient ou les groupuscules terroristes.

Il faut aussi souligner que les moyens techniques de connexion entre eux des grands diffuseurs d'images télévisuelles sont parfaitement au point, mais que pour la transmission d'émissions culturelles ou simplement de documentaires ou de variétés venant de chaque côté de la Méditerranée.

Mais il faut remarquer que les images venant du sud de la Méditerranée sont peu fréquemment transmises par les télévisions européennes, par manque d'intérêt du téléspectateur, ce qui n'incite pas les chaînes de télévision à en faire des éléments de programmation à des heures de grande écoute.

Peut-être peut-on suggérer des coproductions entre chaînes arabo-musulmanes et européennes, peut-être pouvons-nous demander aux autorités comme aux savants de penser à faire répercuter leurs actes et leurs connaissances par des événements créateurs d'images attractives pour les programmeurs de télévision.

Mais les plus belles images seraient celles de la paix donnée, promise ou retrouvée.

L'image des civilisations arabo-musulmanes ou européennes est aussi le résultat du comportement des personnes émigrées ou expatriées de l'autre côté de la Méditerranée, au nord et au sud, et leur intégration dans la société locale est un élément qui peut être montré sous forme de témoignage incitant à la compréhension plutôt qu'à la création d'un fossé supplémentaire.

## 'Houston, we have a problem'

### The role of the media in the north–south intercultural dialogue <sup>(130)</sup>

**Joaquín Roy** <sup>(131)</sup>  
University of Miami

#### I. THE SETTING

##### Preliminary statements and caution

'Houston, we have a problem,' a US astronaut once very calmly said from the moon when he realised that his space mission had encountered serious difficulties and, as a consequence, his life and that of his colleagues were in danger, making the return to Earth extremely problematic <sup>(132)</sup>. This emergency call has become synonymous and symbolic in popular American English for illustrating the discovery of extreme difficulties, professionally announcing such incidents, and the need to overcome the obstacle to avoid terminal consequences.

The main reason for the organisers to convene this conference on intercultural dialogue and to face the ever-difficult task of compiling the proceedings is to consider the multiple dimensions of a fragile intercultural dialogue, to narrow the gap between different cultures, and to improve the increasingly perturbing level of confrontation. The presiding feeling is that, indeed, we have a serious problem.

We have come to the conclusion that the north–south relationship, especially its variation of Europe's links with the other shore of the Mediterranean, the Middle East and the Arab world at large, is in a dangerous situation caused by a malaise. This chronic cancer, in metaphoric clinical terms, is represented by a combination of a lack of proper communication and the absence of mutual understanding. While the south is partially to be blamed for the damaging balance, Europe is called upon to take on the responsibility of repairing the consequences of the systematic activity performed by another actor. The United States is the other part of the equation, not only by virtue of its own information and political sources, but also to a great extent as a result of its overwhelming presence and the power of its media industry. Most perturbing in recent times is the US responsibility through its political power for the design and implementation of the guidelines of the new security policy <sup>(133)</sup>.

However, pretending that these three actors (the south, Europe, and the United States) can work and be analysed in isolation from each other is a futile operation that will only bring more damage to the current situation. Global solutions should serve to repair global problems. Hence,

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<sup>(130)</sup> Paper based on basic statements and comments made during the conference on intercultural dialogue, organised by the Jean Monnet programmes of the European Commission, held in Brussels on 24–25 May 2004.

<sup>(131)</sup> Jean Monnet Professor and Director of the European Union Center at the University of Miami.

<sup>(132)</sup> The statement belongs to Apollo 13 mission astronaut Jack Swigert when he discovered a technical problem on 13 April 1970, while approaching the lunar surface. Texans and especially tour guides remind visitors that 'Houston' was also the first word uttered by a human from the Moon, when on 20 July 1969, another US astronaut, lunar module pilot Edwin E. Aldrin, Jr, announced: 'Houston, this is Tranquility base. The Eagle has landed'.

<sup>(133)</sup> For a selection of some key works on the US foreign policy after 11 September, see books and other works by Bacevich, Boot, Bush, Campbell, Ikenberry, Kagan, Kissinger, Kupchan, Nye and Rice.

the need for an exploratory forum like this one to test, in a very tentative way, several avenues towards a common goal: a better intercultural dialogue between the two sides of the Mediterranean, Europe and the larger Middle East expanding to the Atlantic, and by extension a wider north–south communication network.

Still, we must insist that a very tentative, yet bold methodological framework should accompany our task at all times. This is dictated by the fact that the wide field of commentary is laced with a complex tradition of prejudice, like in a treacherous minefield, filled with apparent and imagined facts that are taken for granted. This is an area (dialogue, ideas, images and media) full of stereotypes and incorrect perceptions converted into dogmas. We should approach this task as an attempt, nothing more. Instead of using science, we are forced to employ the technique of the essay, conceptualised by Spanish philosopher José Ortega y Gasset as 'science, without proof'. Michel de Montaigne, the founder of the essay itself as a literary genre, said in his classic definition, 'it's like a good conversation'. He allegedly admitted: 'if I was sure, I would not try "to essay"'. That is why we have to try.

In this search we intend to share our thoughts on the role of the media in the building of this necessary, urgent, unavoidable intercultural dialogue. We do so because we believe that more than economic and political arguments, discussions, negotiations and solutions, what is needed to solve, at least in part, the gap between these crucial partners is a cultural understanding. And we believe that, in addition to traditional education, a sort of continuing education is the key for not only the neutralisation of conflict between these two unequal partners (north and south) but possibly for the survival of civilisation as we know it.

### **An information society**

Ironically, there has never been a larger volume of communication activity throughout the world. Modern media has multiplied, in terms of a variety of vehicles (computers, digital TV and radio, satellite dishes, cell phones, Internet) and, in a previously non-existing manner, the sheer amount of images, data and text that is being transferred by the minute, daily, and instantly from one corner of the globe to another. Globalisation is then best understood by its massive communicative dimension, transgressing all borders and making the territorial limits of the State basically obsolete, obliterating languages and cultural differences<sup>(134)</sup>. However, the means of communication are not evenly distributed across continents and are not used in a free and fair way by all inhabitants of the planet. Most suffer passively from globalisation, while a select few are active protagonists.

Tourism is one of the leading industries of the world economy, occupying a sizeable portion of the gross domestic product of certain countries. In some cases, it constitutes the only viable business, giving jobs to millions of people catering to unprecedented numbers of travellers. The result is that the political future of certain governments depends on this apparently pacific leisure business. Simultaneously, the spectacular increase in the physical movement of goods, aided by the global fever towards free trade and economic integration, has been matched by unstoppable, unchecked and illegal migration across frontiers.

This new trend has reduced traditional emigration to a modest historical fact. Reversing the trend by which European nations sent their surplus population to the Americas in search of freedom and a better life, after commanding armies and entrepreneurs in the building of empires in Asia and Africa, the European landscape shows today a new variance of an old

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<sup>(134)</sup> For an example of the massive literature, see the book by Scholte.

phenomenon: massive uncontrolled immigration. In a way, it seems that millions demand implementation of Article 13 of the Universal Declaration of Human Rights, which guarantees the freedom of movement and residency in a given State territory <sup>(135)</sup>, making this right extendable to a global benefit. An unprecedented alarming number of resident immigrants from the former colonies, and especially from regions where Islam is the dominant faith, have chosen the former colonial metropolis as the Promised Land. Moreover, the prospect of an increased number of more potential immigrants wishing to arrive on European shores is a daily event, unable to make the grade deserved to be considered as 'news', because of its repetitious, although tragic, recurrence. The building of 'the net', defined as the new phenomenon in which social classes and distinct ideologies are enmeshed, with total disregard for State boundaries and economic levels, has contributed to this spectacular increase of communication and, consequently, of its use (and manipulation) by sectors previously limited in their capacity to political and economic action.

In sum, never before in the history of mankind has the world had such close communication, in a double sense: by verbal, visual or textual means, and by the proximity and movement of humans traditionally clustered in their corresponding native lands. While new threats (such as international terrorism) have taken the place of the conventional wars of the past and the potential sources of conflict during the Cold War, a novel concept of 'security' has captured a spot in the preoccupations of wider sectors of the Western world. Common criminality, unemployment, illicit drug consumption and trafficking, deteriorating medical care, and uncertainties derived from exhausted social and retirement services are now joined by immigration. The obvious success of regional integration following the European model is paradoxically under attack when it is identified by extremist right-wing parties (such as Le Pen's in France) as a threat to national identity generated by the pincer formed by the building of a European-wide entity and unwelcome immigration. As in the 1920s when Jews and other targeted minorities were converted into scapegoats for economic and social problems, immigrants today are identified as the enemies within or at least as the source of an undesirable alien presence, the cause of controversy on both sides of the Atlantic. A very wide range of opinions and feelings include moderate voices that accept and respect the rights of immigrants in new lands, but not at the cost of deepening a fully integrated culture (generously called *mestisage*), and would not respect and conserve the original linguistic and historic nucleus of the society <sup>(136)</sup>. The fact that a large number of immigrants come from Islamic countries has made the intercultural dialogue on both sides of the Mediterranean more difficult.

### The communication gap

In consequence, paradoxically, the current volume of communication coexists with an impressive balance of stereotypes, manipulated data and facts, lack of mutual trust, fear and hate, social isolation and exclusion, and pure ignorance of the other <sup>(137)</sup>. Significantly, influential commentators with considerable social and political impact beyond their national constituencies have oscillated from dealing with grand strategic subjects (the 'clash of civilisations') to tackle the 'problem' of immigration and its threat to national identity. When facing the completion of a rather successful process of continental integration that has delivered, among other benefits, the much sought-after peace, Europe is facing its most formidable obstacle in the manipulation of the fears of immigration by extreme right parties and groups. EU integration

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<sup>(136)</sup> For a review of the repercussions of the opinions issued by former Catalan President Jordi Pujol, see C. P. 'Pujol aboga por la integración cultural', *El País*, 4 September 2004.

<sup>(137)</sup> As an explicit example, see the recent and polemical book by Samuel P. Huntington, *Who are we? The challenges to America's national identity* (New York: Simon & Schuster, 2004), and our review-commentary: Joaquín Roy, 'La nueva tesis de Huntington', *Ojos de Papel*. July–September 2004 <http://www.ojosdepapel.com/>

has generated a considerable nostalgia for national identity (especially in the new Member States that were former Soviet bloc countries), while Brussels and the 'other' are perceived as the new enemies.

As the cliché goes, the end of the Cold War and the corresponding 'end of history' (to use the popular expression coined by Francis Fukuyama <sup>(138)</sup> with a mistaken prediction) has generated a 'clash of civilisations', as Samuel Huntington mapped out in an exercise of apparent wishful thinking under the encouragement of special interests of the 'military-industrial complex', as described by Eisenhower in the 1950s. Real or imagined, this new war, awakened by the events of 11 September, has suffered its first casualty. The news (meaning the credible treatment of the events, with objectivity and honesty) has suffered a great loss after the attacks of 2001 and the new global war on terrorism. The impossibility of dialogue between two opposing sides has replaced communication. Noise has substituted for persuasion; explosions have taken the place of songs; texts with threats and extortion demands have succeeded petitions and pleas. The north-south divide is in a state of sorry communication, when not in a permanent and endemic engagement of confrontation.

## II. AN ASSESSMENT

### Exploring avenues for solutions

In consequence, we believe that we are in desperate need of exploring a plausible solution, in this case with a two-level dimension. In the first place, on a geographical level, I propose that the remedy must address all sources of the problem. While Europe and the United States may be engaged in a particular competition <sup>(139)</sup> and have special communication problems of their own, possibly due to the simple fact that in the 20th century they have gone through different experiences in confronting chaos and tyranny, they are both in the same boat when facing the challenges of the south. Coming from Mars or from Venus, to use the simile offered by Robert Kagan <sup>(140)</sup>, Europeans and Americans are part of the problem, and they have to be part of the solution.

Whatever our personal or national inclinations and our prejudice towards the only superpower are today, the United States has to become part of the remedial process, for two main reasons. First, because it was American journalism and the development of its media industry that once set the tone and patterns for the rest of world. Moreover, for better or for worse, American media still dominates the current scene. Second, because the United States is partially (by virtue of its dominance of the industry) the origin (or at least it is perceived this way) of the communication conflict between the north and the south; it therefore needs to be an integral ingredient of the reparation operative.

The second dimension to be explored is the object of study itself. We ponder about the media as one of the reasons for the lack of communication and misperceptions between cultures. At the same time, we advocate that the press and other electronic media be converted into an efficient agent for correcting the gap in communication. We must take to test, until its final consequences, the current validity of the status historically given to the press as the 'Fourth

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<sup>(138)</sup> *The end of history and the last man*. New York: Free Press/Maxwell Macmillan International, 1992.

<sup>(139)</sup> For commentaries on EU-US relations, see Pond.

<sup>(140)</sup> Kagan.

Power'. When the other three do not seem to have much success in lessening the divide between north and south, we may well rely on an alternative solution.

Although we recognise the need to keep in mind that the south should still be the main protagonist, it has been historically the victim (especially its most deprived sectors) of the fractured intercultural relation, but we do not make it the centrepiece of this analysis and the proposed recommendations. Yet, we stress that any dialogue needs two partners, avoiding the mistakes by which the south makes demands all the time, while the north listens and tries to appease the apparent claimer of past injustices.

However, to reduce an interchange to a business between two individuals or distinctive groups is simplistic and risky. Entrenched attitudes and stereotypes, free from corrections, adaptations and compromise, may produce a wrong picture and the opposite result of the intended goals.

#### ASKING QUESTIONS

It may help if we proceed to follow a path bestowed with some tentative questions. Even in the event that we fail to find definite answers for some of them, we will still manage to provoke some commentaries. In the first place, we wonder if the media, in general, can be considered a trusted source to accomplish a truly effective intercultural dialogue. In addition to receiving negative answers when targeting specific examples and concrete countries, doubt is a sentiment that comes to mind. In consequence, when focusing further, the observer discovers that the media is actually part of the problem, the lack of effective dialogue. Then, unable to pretend that the media, as overpowering and irreplaceable channel to transmit information, can be considered as irrelevant, we must address seriously the task of asking if an integral part of the problem can also be part of the solution. The tentative answer is that it must. The only unanswered question is how.

When exploring a little more in depth the different angles of the handicap of having a main actor converted into the culprit, a more precise inquiry will benefit from trying to decide if the solution sought can be placed in the hands of a specialised press. Alternatively, the opposite option consists of leaving the task to the mercy of the market laws of supply and demand according to the inclinations of the uninformed, poorly educated masses.

For example, what sections of newspapers should be better targeted to engage in this new mission of correcting a mistaken communication? Are we to strengthen the informative pages? Do we tackle the analytical portions? Do we concentrate on the more specialised op-ed pages, which are the ones normally read at ease by the elite or the sectors of readership with more available time?

In any event, how can the core of the elite press (the newspapers universally recognised as 'sources of reference')<sup>(14)</sup> correct these perceptions and endemic stereotypes? Is it possible, nowadays, to rely on the leadership role of old-fashioned intellectuals (*philosophes*, *pensadores*) turned into media professionals to redress the negative mutual lack of trust? In the event of a positive answer, one must still wonder about the cultural training and intellectual experience by which today's media professionals must face the task. If in doubt, should responsible newspapers leave that function in the hands of outside contributors, not necessarily media professionals, but responding to the customary inclinations of writers?

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<sup>(14)</sup> For a classic example of this concept, see Merrill.



An additional dimension to be taken into account is the debate centred on the use by European newspapers of informative, analytical, and opinion products generated by the US wire services and newspapers with budgetary resources allowing them to station correspondents and to send specialised commentators to conflict zones such as Iraq. The obvious question then is: how can independent, small or medium-sized European newspapers afford an alternative expense? Are translations from each side needed? Are original writings a preferred mechanism?

At all times, special attention should be given to a dilemma posed by the unavoidable role of political power and governments. On one hand, it is the duty of government to care about the common good. Education, information and culture in general are not expendable commodities but an integral part of the historical agenda of governance. Democratic government, as a consequence, has the obligation to nurture a strong, viable, independent media. However, in most countries, media is at the mercy of the market, and many times needs the correction of government help, the same way as orchestras, museums and libraries. The problem resides in deciding when government help (by tax cuts, public advertisement, lower mail rates) becomes political interference. While it may be wise to insist on an active role of governments in helping the independent, but economically weak, media in reducing the communication gap between north and south, manipulation of the press through political power must be avoided.

We do not intend to find an answer to all of these questions. Outlining these questions, however, presents a basis for dealing with the pertinent areas of the central topic of study and commentary.

#### AVOIDING DENIAL

The first preliminary decision we have to make, if we are seriously committed to seeking a realistically affordable solution, is to admit the degree and the depth of the problem, then to accept the corresponding guilt, and finally to recognise the limitations of the proposed solutions and the shortcomings of the agent (the media) proposed to remedy the situation. Moreover, we have to implement this task without any prejudice and unnecessary blame on the other.

The first exercise is one of humility and the admission of the fact that the north (Europe in this case, but intimately connected with the United States) has a historical, social, and economic obligation to take the initiative in, if not solving the problem (Utopian schemes are usually the source of disasters), at least providing substantial remedies. As previously mentioned, the media may not be the only solution, and in reality is also part of the problem (as is the case of the United States). This admission is rather obvious considering the role of the superpower in creating and aggravating the tension dominating today's world.

The Spanish philosopher Ortega y Gasset was often meditating on the negative international isolation of Spain, a country that ironically was the founder of European imperialism, inventing the phrase attributed to other monarchs with kingdoms in which the sun never set. He once said: 'Spain is the problem and Europe is the solution'. This has come to symbolise the plea of the intellectual sector of Spanish society that has historically pushed for the incorporation of foreign, mostly European, ideas to modernise the political and social behaviour of Spain. In contrast, an adversarial force has advocated for a conservative attitude to strengthen authoritarianism and dictatorships. We could easily and most optimistically adapt this diagnosis and prescription made by the author of the *The rebellion of the masses*, a book that makes a lot of sense today. Lack of communication, in general, is the problem and the dialogue through the media is, at least, part of the solution.

However, selective finger-pointing at targets without careful study will also lead to more problems than solutions. On the one hand, isolated throwing of stones does not lead anywhere but temporary individual satisfaction. On the other hand, blatant denial has to be avoided at all costs if we seriously believe that we (in ventures like this) can contribute to an enriching dialogue that reduces the rift between both sides of the Mediterranean and similar scenarios in other parts of the world where the European experience is worth exploring, adapting and adopting.

### Special context

By coincidence, the preparation of the conference held in May 2004 in Brussels and the drafting of the tentative remarks were simultaneous with the celebration of the World Day of Freedom of the Press and the issuing of a report by the prestigious think tank Freedom House, dedicated to the protection of human rights. For the second year in a row, this report confirmed that press freedom has systematically deteriorated worldwide, a fact that needs to be taken into consideration when evaluating the role of the media in the north-south dialogue <sup>(142)</sup>.

Not by simple coincidence (because it was organised even well before the tragic events of 11 September 2001), the Barcelona 2004 Forum, a five-month innovative, trend-setting programme of activities, tried to catch the attention of visitors and observers with an array of entertainment, symposia, and exhibits clustered around the central issue of cultural diversity and the need for meshing contrasting views and effective communication <sup>(143)</sup>. A series of high-level weekly conferences on specific topics was topped by an ambitious conference on migration held in September 2004. A journalists conference decided to found a World Observatory of the State of Information, issuing a manifesto that included, among other pressing items, a denunciation of new 'censoring' and 'information manipulation', 'lack of protection for journalists', 'job insecurity', 'absence of access to information by the poor' and 'risks derived from the media economic concentration'.

Significantly, the five-month event was held on Spanish soil, the first European territory to suffer a direct, massive aggression (which was also the most deadly terrorist incident in Spain's history) of the 11 September type, right before the national elections of March 2004. After some doubt and mistaken manipulation by the Spanish government attributing the terrorist Madrid attacks of 11 March to the Basque terrorist organisation ETA, the culprits of the 196-dead massacre were identified as Islamic fundamentalists, creating further damage to the already fragile intercultural relations of a country not historically used to immigration. Authorities and opinion leaders have been since then engaged in avoiding a potential backlash against the immigrant population of Arab origin, adding fuel to the fire created by a parallel social phenomenon, prone to be the cause of further unrest and confrontation in times of economic uncertainty and demographic alarm due to the fact that birth rates have been diminishing in Spain and other European countries nearing dangerous levels, only to be recently offset by new fertility trends originating from immigrant mothers.

The reality is that Spanish shores reveal the daily (and deadly) spectacle dramatised by television news showing the arrivals of desperate newcomers fleeing poverty, misery and persecutions. Illegal immigrants, coming from Morocco but in impressive numbers originating in sub-Saharan countries, through treacherous navigation in flimsy boats, at the mercy of human trafficking mafias, are opting for a better life in the north. This is a never-ending movement, which is a mirror image of what, across the Atlantic, is the other north-south variance in

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<sup>(142)</sup> Freedom House.

<sup>(143)</sup> Forum Barcelona.

the Caribbean and the border between the United States as Mexico. The north may be populated by 'infidels,' be callous towards the needs of the south, 'worthy' of attacks and destruction, but it is still a magnet for the destitute masses of the south. As a daily recurrence, not passing the test of what is news, senseless terrorism, dozens of cases of self-immolations, assassinations by the hour, reprisals, and fear and hate of the other, have become the norm in the world today. In spite of the denials of the US President, the globe has become much more dangerous than the one existing after the end of the Cold War. It is also more dangerous and less safe than before the relative calm of the late 1990s before 11 September 2001.

### III. FINDINGS

Some of the basic ingredients of the overall diagnosis of the north-south divide and its relation to the media are more obvious than others, and they require closer attention. These are non-exclusive and are open to be expanded, corrected and rephrased in future ventures.

#### Trade problems

In the first place, the role of the media today, as an agent of change and bridge-building in the north-south relationship, is neatly divided between two sectors, a contrast more dramatic than ever before because of technological advancement. One cluster is represented by the minority action played by the conventional press (newspapers and magazines), with opinion columns and analysis consumed mostly by an elite readership. The second has been historically oscillating towards the visual variances (film, television, radio) targeted and accessed by the masses (with high rates of illiteracy) in the south. In the West, television has seen its international news content slashed at the mercy of budget cuts, ratings, and the apparent tyranny of the masses, lured to reality shows, talk shows, gossip, or simple and legitimate entertainment that in times past was monopolised by films to be observed only in movie houses.

Still, in both cases of the West and the Arab countries, the scheduling time pressure of television leaves very little space for the necessary commentaries that do not fall under the clear cut of black and white, and issues that deserve a more refined analysis. One-liners and quick answers substitute for alternative views and cautious judgement that have to take refuge in the commentary pages of the newspapers and magazines. Unfortunately, as described below, print media is also subject to other kinds of tyrannical budgetary pressures.

On the business side, in spite of correcting measures by anti-trust laws, visual media and newspapers in Europe and the United States have been concentrated in a few hands. This has generated a drastic reduction of the status of freedom of the press. While political control and intrusion of the media by governments seem to be historically identified with repressive third world regimes, and still these are the trademarks of press limitations in Africa, Asia and Latin America, the cancer has spread<sup>(144)</sup>. Concentration of ownership in a few hands in Europe, plus the heavy dependency on public media with governments in key EU countries (caused by advertisement, financing of huge deficits, and the political control of the boards appointed by government or parliamentary commissions), have raised doubts about the neutrality of the 'solution' and its effectiveness in carrying a positive message for dialogue building with the south<sup>(145)</sup>. Spain and Italy, two European countries that have shown to be historical leaders in

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<sup>(144)</sup> See report of the PEN Club International; Rosa Mora, 'El PEN Club denuncia un clima cada vez más hostil a la libertad de expresión', *El País*, 29 January 2004.

<sup>(145)</sup> In countries like Spain and Italy, the intimate linkages between governments and public media continue to cause controversy and acute acrimony. See Avui, Riding, Barber, Galán, Cañas, Comas.

culture, and success stories in overcoming past fascist experiences, are at the bottom of the list of EU countries in the ranking of freedom of the press issued by the worldwide NGO Reporters without Borders, occupying places Nos 42 and 53 <sup>(146)</sup>. While in Spain the ETA terrorist phenomenon is the major cause for the insecurity suffered by the press, in Italy the main cause is the concentration of media control under interests dominated by Prime Minister Berlusconi <sup>(147)</sup>.

Further inspecting the professional side, one finds that numerous specific cases of unprofessional conduct in major private newspapers in the United States and Europe have dangerously contributed to diminishing the credibility of the media <sup>(148)</sup>. We note with alarm that the trend is not exclusively connected with a specific cultural zone, country, or economic level. It is a pervading trend that affects all media everywhere <sup>(149)</sup>, but has received worldwide attention in the cases of recurrence of professional incidents that have left a probable permanent scar on the history of US journalism. A series of cases of invention of non-existing experiences (such as drug consumption and trafficking by minors), whose 'reporting' event granted prestigious awards (such as the Pulitzer Prize), have provoked a loss of credibility and the forced resignation of executives at all levels in management and editorship <sup>(150)</sup>.

### Cultural and political dimensions

News images consumed by the south are not necessarily perceived as neatly or exclusively European. They are largely and vaguely considered as Western, ultimately spreading values with a universal appeal, but in certain terms are identified solely with the United States, especially when broadcast by US-built and -owned outlets, such as the emblematic CNN. This Atlanta-based and worldwide-present media phenomenon has become a point of reference, stubbornly imitated with mixed results. This contemporary trend is confirmed by the fact that most national networks try to replicate the American model. In the Arab world an effective alternative has been found with the new chain Al-Jazira, still going through a necessary period of consolidation, loyalty of audience, and credibility, amidst a load of polemics for its direct communication links with terrorists who use the network to air their views and demands. This pioneer organisation is today in good company. Among the newcomers are Al Arabyia (in the United Arab Emirates), Al Alam (Iran), Al Menar, Al Haytar and Al Hurra (funded by the United States); [these are] only some of the examples transmitting in Arabic via satellite <sup>(151)</sup>.

Shortcomings in the media of the Arab countries are dramatic. While only 1.6 % of the Arab population has access to Internet and there are only 18 computers per 1 000 inhabitants (as opposed to 78 worldwide), in 1 000 years only 10 000 books were translated to Arabic (the same figure as books translated into Spanish in one single year). A best-seller in the Arab world (284 million people) means 5 000 copies. Only 53 newspapers are published for each 1 000 people, compared with 285 in the developed world. While there are 120 satellite channels in Arabic, 70 are under full government control <sup>(152)</sup>. An endemic problem in the rest of the Islamic countries, the print media is particularly the target of government harassment in the Maghreb countries.

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<sup>(146)</sup> *El País*, 'España está a la cola'; see Reporters without Borders report: [http://www.rsf.fr/article.php3?id\\_article=8247](http://www.rsf.fr/article.php3?id_article=8247)

<sup>(147)</sup> Gabriela Cañas, 'Eurodiputados italianos piden una ley europea', *El País*, 23 July 2004; Rituerto.

<sup>(148)</sup> Wasserman.

<sup>(149)</sup> See Wasserman, Lovitt, Rohter, Royo, Tyler, Schudson.

<sup>(150)</sup> Galán, 'El estado'.

<sup>(151)</sup> Erfan.

<sup>(152)</sup> *El País*, 'Sólo el 1,6 %'.

While cases of persecution of editors of newspapers and magazines are present in Mauritania, Tunisia and Algeria, Morocco has attracted special attention and concern from European press organisations and governments for the sentences imposed on journalists critical of the regime <sup>(153)</sup>.

Meanwhile, Western television monitored in the south is still heavily identified with US networks. Europe's television message in Arab countries is non-existing, diffused, or partially identified with certain countries. This is weakly accomplished via the UK's BBC, and on a smaller scale with France, Spain and German international programmes beamed in the original languages. Only a few hours of Italian television in Arabic is available in north Africa. Assessments of European-wide experiments such as Euronews are limited, and its expansion, future prospects and adaptations to other formats need to be addressed, but lack of funding or political will have cast serious doubt over its future viability.

Moreover, on a political level, when leadership and model-making were most needed and expected, mistakes in judgement made by the US media in endorsing the policy of the White House after 11 September, and especially in the war against Iraq, were dramatically admitted. They were recognised post facto and too late by important newspapers such as the *New York Times*. Among other reasons, lack of care and a mistaken sense of patriotism and trust in elected officials (at the level of the US President) in tragic times (11 September and the war in Iraq) have caused this fiasco of unprecedented dimensions <sup>(154)</sup>. A harsher assessment within the United States has branded as a 'disgrace' the performance made by these newspapers and other major news organisations in reporting the war. The problem is not that they 'got the story wrong', under manipulation by the government, but that they were afraid to 'tell the truth' <sup>(155)</sup>. This accusation comes when the media itself has been entangled in an insight polemic caused by the perception that one major television organisation, Fox News, has taken a brazen endorsing attitude of the Bush administration, with the result that the traditional 'liberal' and therefore critical view of any administration has suffered a correction in the sense that the Republican audience of Fox has dramatically increased. The fact that the United States is technically at war, or at least this is what the government officially declares, and this statement is replicated by the terrorist groups that make the goal of destroying the US system an explicit policy, has made the customary neutrality and objectivity of the media a sensitive subject. Having to choose between basic patriotism and collaboration with a murderous enemy, professional journalists elect accordingly. In consequence, a common accusation against third world media, controlled by governments, has thus been converted into a political boomerang, making the communication gap wider <sup>(156)</sup>.

The damage is not limited to the US media. Reputable European organisations, with a historic record of independence, such as the British Broadcasting Corporation (BBC), have fallen victim to political manipulations, with the result of serious damage to the media trade and the model itself of State-owned enterprises. As a whole, political mistakes and shoddy professionalism have contributed to a diminishing of trust by its readership in the print sector. The ultimate business result has been the reduction of the number of pages and a decreasing number of newspapers available nationally and locally. This has in turn caused some major cities in the West to depend on only one major daily, with the obvious collateral damage of a monopoly controlled by a few publishing groups.

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<sup>(153)</sup> Cembrero, 'Acoso'.

<sup>(154)</sup> Steinberg.

<sup>(155)</sup> Wasserman.

<sup>(156)</sup> Angwin.

Moreover, criminal activity, either sponsored or tolerated by government, or directly paid by private special interests, has converted the exercise of journalism into one of the most dangerous jobs in the world. This scourge against the basic freedom of the press has become a violation of fundamental human rights, targeting a specific sector of society. It has become endemic in the south, especially in Latin America, where economic control of the media in a few hands is not the most pressing problem encountered by the profession, because it is taken for granted, as a lesser evil. While journalists are frequent victims of the war in Iraq, either because they find themselves in the path of fire between confronting sides or because they fall victim to kidnappings, in some Latin American countries and other parts of the world, they are the object of reprisals by political sectors or illegal business ventures <sup>(157)</sup>. In 2003 alone, 42 journalists died violently while on duty <sup>(158)</sup>. Until 11 September, 50 had already been killed, while more than 200 were in jail <sup>(159)</sup>.

Simultaneously, in the United States, journalists come under the pressure of democratic systems to violate the secrecy of sources, casting a serious doubt not only on the future of the profession but also on the credibility of the political system that is supposed to guarantee the inviolability of freedom of expression. In addition, in a move not directly connected to the repercussions of 11 September, the US government banned the publication of scientific articles originating in Iran, Cuba, Libya and Sudan, in compliance with the trade embargo imposed on these countries, a move denounced as a violation of freedom of expression, and a reduction of north-south communication <sup>(160)</sup>.

Meanwhile, lack of interest in European and US media in dealing with non-commercial subjects, unconnected to the daily worries or interests of the readers (according to ratings in the case of television programmes or the often arbitrary decisions of editors), makes official support and private funding mandatory, putting pressure on budgets. There is not more dramatic evidence than the contrast shown by the content of the Public Broadcasting System (PBS), known as 'public television', in the United States and the rest of the networks, where cultural programmes and documentaries are absent or reduced to a minimum. With this space extremely limited, only the news hours and their periphery are available to fill the gap of an intercultural dialogue. As discussed below, this shortcoming is intimately linked with a customary business-oriented decision of using 'free' services for generating the hard content of newspapers.

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<sup>(157)</sup> As examples: Rohter, Herald.

<sup>(158)</sup> RGG.

<sup>(159)</sup> Reporters without Borders: [http://www.rsf.fr/rubrique.php3?id\\_rubrique=20](http://www.rsf.fr/rubrique.php3?id_rubrique=20)

<sup>(160)</sup> Rivera.

#### IV. RECOMMENDATIONS AND REMEDIES

##### AN INDISPENSABLE NATION?

As outlined above, to pretend that the United States does not exist is a futile operation – the elephant in the zoo cannot be hidden. The most one can do is to help so that the elephant does not create havoc in the china shop. Questioned for her choice of terms, former Secretary of State Madeleine Albright attracted the attention of observers of the new international scene, by insisting that the United States has to be taken into account in any rearrangement of the world structure after the end of the Cold War. This demand has been even more dramatically recalled after 11 September. Considering that the communication gap between the north and the south has further deteriorated since the terrorist attacks of 2001 and accepting as an undeniable fact that Islamic fundamentalism has been identified as the main adversary in the new war, the conclusion is that any scheme to correct the fractious relationship between north and south needs to include, if not the 'indispensable' nation, at least the 'unavoidable' power.

Any solution contributing to the narrowing of the north–south gap needs, in principle, the incorporation of, first, a thorough comprehension of the problematic of the United States in today's complex world, and then the most suitable [way of engaging] the effective sectors of American society in solving the problem. Dealing with the south should be handled with great care and sensitivity; in engaging the United States, Europeans should be aggressive and direct, because Americans are part of the equation. Europeans, in subtle terms but without any ambiguous confusion, should make this clear: 'Houston, we have a problem'. Houston and Texas are very relevant today.

It is a coincidence that US President George W. Bush was the former Governor of Texas, but an important cause of transatlantic disagreements is centred on his personal performance. The majority of the problems of the north–south intercultural dialogue did not begin with, nor are a result of, the foreign policies activated by Bush after 11 September. Nevertheless, one must admit that the world perceives the policy of the United States, rejecting it or supporting it, as a personal enterprise of the current president. 'Bush, we have a problem,' seems to say any observer of the miscommunication with a portion of the south that seems not to listen to the promises of a better life after Saddam Hussein. The same statement seems to come from an impressive part of the European citizens and leaders who do not see the world as safer after the Iraq war. The same statement, pronounced as coolly and calmly as the US astronaut once sent it through the space waves, has to be presented to the present and future US leadership because the true meaning of 'we' is that Europe and the United States are immersed in the same circumstances and have to work together in finding a solution.

This mutual dependency and the need to engage the United States in finding a solution for common problems is further dramatised by the perception that, in spite of denials and certain positive indicators, American society and crucial sectors of the economy are in relatively deep trouble, added to the fact that visions of contemporary living in a complex world are different in Europe and the United States; data show alarming shortcomings in the United States, when compared with their counterparts in the European Union. Health, education, life expectancy, personal security and income distribution are some of the areas where the United States fares negatively when compared with the new 'European dream' <sup>(61)</sup>. A sick American society with a population scared and confused facing international hate and terrorism is not the best partner to be left alone and at the mercy of risky solutions. Different visions do not suggest drastic divorce in mapping a strategy.

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<sup>(61)</sup> Rifkin.

While a true dialogue always needs two partners, and ultimately the south should respond, this is not guaranteed. The cultural simile implied in the expression 'it takes two to tango' is best understood regarding the cooperation with the United States. After all, in the crucial dimension of the trade industry we are considering, the relationship between media and politics, the United States experience enjoys a permanent classic space evident in the two extremes. First, it becomes evident in the manipulation of power by the media, as in the example of *Citizen Kane*; second, in the correction of the abuse of power as in the spectacular results of the inquiry of the reporters of *The Washington Post* into the activities of President Nixon in the Watergate case. Only when convinced of the ultimate rejection of this role by influential US actors, policy recommendations should include an agenda solely based on European means and perceptions.

It is for this reason that, from a European perspective, one should pay close attention to some miscalculations pondered by decision-making circles in the United States. One specific example is centred on recent calls for a more effective government policy in correcting the negative image of the United States in the south, a demand that is bound to generate further damage, on two grounds. First, the US government does not have a comprehensive strategy of policy and programmes to build or sell a specific image of the United States. With the exception of some news packaging in defeating the Axis in World War II, or exceptional government interference at the height of the McCarthy era, a Madison Avenue style campaign with the government at the helm has not been the rule, but the exception. In contrast, the 'selling' of American culture has been the monopoly of private industry pushing its own products (film, clothing, music, sports). Only systematic research, never attempted for lack of necessary resources, will probably demonstrate that the outside world really does not adopt or internalise fashion, mores, or cultural products because they are identified as American (United States), but because they are appealing due to their modern qualities, practicality, instant satisfaction, sheer feeling of freedom, or simple political and social freedom.

Attempts to rescue, as genuinely American, the products and patterns universally adopted as global may backfire. Experiments of reducing goods and other cultural products as 'local' and 'national' (identified as exclusively belonging to the United States) may be received with disdain and lack of understanding. This incorrect strategy frequently ignores that the strength of US 'culture' is paradoxically connected to its intrinsic absence or weakness of a specific linkage with local identifiers. This apparently is the key for the understanding of the appeal of basic, uncomplicated, universally perceivable cultural features, moral codes, and legal requirements. Millions of people of diverse origin find it surprisingly easy to adapt to (if migrating) or to adopt (if from a distance) a non-existing 'national' culture, weakly 'sold' by a modest government policy. Identified as universal, the myth of the American dream may be a product very difficult to market when it is damaged by a specific government policy, such as the apparent strategy in Iraq and the misguided war against international terrorism. Damage to the image of the United States, whose values have been adopted as universally feasible, can only be repaired by a natural, social, people-friendly process, free from further government manipulation and disruption.

### **1. The European participation**

Across the ocean, while admitting limitations and mistakes, Europe cannot renounce its positive legacy and must insist on sharing a recent experience. While not returning to a past 'mission civilisatrice', there is still a sense of obligation to be matched with effective action. If that means imposing conditions on aid and assistance for the protection of human rights and basic liberties, so be it. Looking the other way when freedom is trampled in lands receiving European attention is a failed policy that has been implemented in the past for the sake of self-interest. Nevertheless, it has generated a due payment to be met in the future.



In any case, if there is to be a basic message from the north (Europe in this case) disseminated through the media, it needs to be perfectly identified with the permanent admission of the past mistakes that led Europe to almost self-destruction. Intolerance, totalitarian ideologies, racism, ultra-nationalism and a futile sense of political or economic superiority have been rejected to a certain notable extent through a sharing of sovereignty, and cultural and political cooperation that began by pooling the scarce resources of coal and steel. Mistakes included, this recent European experience needs to be the irreplaceable centrepiece of the proposal from the north. Functional and fair regional integration, open to the rest of the world, adorned with all the trappings of structural funds administered by common institutions, continues to be the EU gospel.

Europe must exploit its most important asset: the values Europeans have been defending since the foundation of the original European Coal and Steel Community in 1950. They have apparently been missing in action by virtue of the cruel war fought by the United States in the confusing world of today. While admitting the military and possibly economic dominance of the United States, doubts are seriously raised about the potential for the effective use by the United States of what is called 'soft power' <sup>(162)</sup>. Ironically, this national dimension for dealing with the rest of the world has historically been the key for the success of US culture in influencing other cultures. Film, music, sport, drinks and clothing crafted in the United States have contributed to the confusion of Western values with what are, in origin, American, and simultaneously and universally appealing. This is the key explanation for its impressive accomplishment in capturing the minds of millions of people in all corners of the planet.

This 'soft power' dimension is where Europe can play a positive role in capturing the minds of the south in an enriching way. Only in this way, will we upturn the apparent fateful mandate of the 'clash of civilisations' (a paradigm crafted, among other purposes, as a replacement for the targeting of the enemy in the Cold War, to justify defence spending) into a 'dialogue of civilisations'.

## 2. Self-inflicted wounds

The effective role of the media in strengthening positive communication between north and south, and at the same time properly disseminating corresponding values and legitimate views and perceptions, needs independent, well-funded and solidly supported means. This is a prerequisite to back and nurture the energies of individuals who ultimately will address the direct policy actors in different countries and cultures.

The current panorama of media crossing borders and transcending the frontiers of different cultures, on both sides of the north-south divide, reveals a basic pattern composed of visual media and print sources with some obvious contrasting patterns. Western television consumed by the south is overwhelmingly dominated by private US networks (CNN in the lead) and secondarily by some selective State-owned national services, beaming special, combined programmes for international consumption with the double purpose and intention of informing national citizens residing overseas and supplementing foreign policy interests and views, while serving as a supplementary mechanism to foreign aid and assistance. Television sources have been slowly and tenaciously taking the place of the old, traditional radio networks, historically accessible in short-wave format. While in the past, films were (and still are) a primary source for spreading an image of Western values (overwhelmingly of the US variance) in Africa, Asia and Latin America, television now reigns supreme in spreading a 'real' image of instant, perceptible, current life and opportunities of the north.

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<sup>(162)</sup> Nye.

While visual images tend to be consumed and internalised by a wide range of the population, [who are] in large numbers illiterate or not very well educated, print media has a more selective circulation; it is more expensive and costly to produce and disseminate, and requires more labour-intensive investment, making it more dependent on government subsidies (if not control) and willing private interests expecting a return or influence. In contrast with the passive consumption of culture by the masses, it is the elite sector of the north that is bestowed with the mission of transmitting European and US views to the cultures of Asia and Africa.

Reserved in the past for an aristocratic, highly educated elite, a product of the Enlightenment, nowadays independent journalists and columnists are the survivors of the ideological confrontations of the 20<sup>th</sup> century, the fights to obtain social justice and equality, and the reprisals inflicted by the State systems under threat or, much worse, today's diverse interests not responding to governments. The problem is that, today, publications are under the double threat of diminishing advertisement income (caused by the competition of other media, where budgets have fled in search of a faster return on sales) and increases in production costs (generated by rising costs of paper, ink, and technological advances). As a result, the sections that usually fell victim to the axe in budget cuts are the ones suffering from one of three negative features. First, they may be seen as simply expendable, by the sheer magic of arbitrary decisions made by the business management. Second, they may be labelled as supplementary. In other words, applying a strict journalistic logic, they are not intrinsically considered as 'news'. Third, they are treated negatively for being external in production and dealing with foreign issues.

Op-ed pieces and selective analysis features are vastly written by outsiders, individual freelancers (in most of the world), or established columnists (in the case of the United States), marketed by 'press syndicates' (in essence, agencies distributing articles to numerous newspapers, or services developed by the most powerful newspapers), with either non-existent contracts or arbitrarily renewable arrangements in the case of the modest freelancers (the majority) and profitable agreements (a minority). When written by staff writers, their work obligations rest on other duties in the newspapers and magazines. Moreover, these op-ed articles and analytical pieces deal with foreign subjects, normally very distant from the daily experiences of the bulk of the readers, whose lives do not seem to depend on the degree of information and judgement on exotic topics.

The result is that analysis and opinion provided by independent views, either under the cover of private 'syndicates' or supplied by individual freelancers, are the two sectors converted into the first victims of downsizing. Then three of the most formidable enemies faced by freelancers fill the space traditionally occupied by independent views. The first is the traditional, expected and acceptable appearance of inside columnists, already on the payroll of the newspapers, fulfilling part of their professional duties as op-ed contributors, while working in the news and analytical sections. The second is the occasional writers who claim that they do not want (because apparently they do not need) to be compensated. The individuals who actually 'pay' to be published represent the third.

While the first and second variances have been in existence for centuries and respond to a set of reasons (economic independence, vanity, and legitimate freedom of expression), the third is the most dangerous for the ultimate freedom of the press, with serious consequences in connection with the topic of this essay. It simply means that the media management and ownership have renounced their central role in guaranteeing the honesty, credibility and objectivity of analysis and opinion, by leaving that task to the mercy of arbitrary interests and pressures that do not have as their primary objective the search for truth and the most effective enlightenment of the readers. While under the pressure of budget cuts and the reduction

of print space, they have vacated a valuable 'real estate', in the words of an editor of the *The New York Times* <sup>(163)</sup>, for the occupation of government and partisan views.

By incorporating unpaid contributors in the op-ed pages, newspapers may cut expenses. But the apparent short-term benefit received may be offset by the loss of contributions from the logically more prestigious and compensated contributors. Ultimately, editors and owners may discover that, using the American English popular expression, 'there is no such thing as a free lunch'. There is no such thing as 'free' freelancers, either. Somehow, they will be paid, at a cost to the readers and also to the newspaper. Besides the obvious lack of professionalism and disloyal competition posed by the unpaid frequent or sporadic columnists, a malaise that may reside solely in the realm of ethics, the most damage is caused by the interests and individuals who exert all kinds of pressure and mechanisms to get articles published by 'paying' the newspapers and magazines in different forms. They, for example, exchange this favour by allowing or promoting advertisement of the governments and interests they represent or own. They also may offer pieces with angles or theses greatly favoured by the ideological view of the publication, making its publication much easier.

While this perturbing phenomenon is a manageable problem to deal with in the Western world, with the independent columnists possibly being the only ultimate victims, it is worrisome when it is a norm in the newspapers of the south. The result is that only the economically powerful, backed by a comfortable social and economic situation, if not political support, capture the analytical and opinion space of the print media. It is doubtful that, on both sides of the north-south divide, clarification of the sensitive issues that makes the intercultural dialogue mandatory will be accomplished by remaining a monopoly of sectors that are intimately linked to governmental dependency or control. It is not surprising that in the United States and the Arab countries the controversy created by Iraq became a casualty of overzealous patriotism and partisan views expressed by 'unpaid' freelancers, whose ranks enlarged in a spectacular fashion.

Some observers may be sceptical about the factual exactness of the statements in the preceding paragraphs. In the absence of accurate statistics and content analysis of myriads of op-ed pages in a representative sample of newspapers around the world, an exercise only available at a high research cost, they may opt for an alternative method of inquiry, which will yield similar results. The scanning of the opinion pages for a limited period of time, a week or two, but also feasible on a single day, will reveal an alarming number of pieces signed (not necessarily written) by a high number of top governmental officials and sporadic commentators who are intimately linked with the businesses connected with the same media. It would not be surprising to find out that today more than 50 % of the content of these pages has such origin. One wonders if this unusually high proportion of non-independent views is the best contribution to closing the communication gap.

### 3. Conclusions

Some basic media recommendations and a realistic warning should be entertained with the intention of maintaining the hope of a better relationship in this crucial triangle composed on one side of Europe and the United States, and on the other by a wide south, narrowly considered as represented by most Islamic countries.

The urgent closing of the communication gap between the north and south is a two-way street. The north has to be more ambitiously open to the views from the south. It also needs to be actively involved in the self-education of the realities of the south. In other words, the media

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<sup>(163)</sup> See Shipley.

in Europe and the United States needs to distribute more materials produced by Western authors, as well as accepting original works crafted with a genuine perspective of the south.

At the same time, the media and governments of Europe and the United States have an obligation to make (by investment and sharing of resources) the media of the south more open to content contributing to better information of both the views of the north and the north-south relationship. At all times, the cornerstone of any Western policy contributing to a more open communication line with the south should be the respect of human rights and the specific protection of freedom of expression. Any government programme of assistance should include this variance of a democratic clause. Private investment and commercial links with the media of the south should include the same guarantees that exist in the countries of origin.

While still recognising that the occupation of valuable analytical space in European and US newspapers by unpaid contributors is a fact of life that seems not to have a quick solution, print media should still be encouraged and lobbied to be more receptive to the incorporation of views from the south. The only limitation will be the skilful placing of a filter that will detect unacceptable interests and extreme views, which will damage the intercultural dialogue, if not make it worse. An effective procedure to guarantee an indispensable degree of equanimity in the editorial policies of organisations dedicated to the dissemination of free materials to the press should be that non-profit foundations control them <sup>(164)</sup>. Nevertheless, this solution will not solve the economic problem. The cost of their operations will still be dependent on the largesse of government and international organisation subsidies, unless private philanthropy decides to increase its contribution to this difficult field, open to manipulation, controversy and, ultimately, damage to prestigious sources of funding.

Government television networks should make a further effort in incorporating more air time dedicated to news, analysis, and documentaries from the south that are locally generated and free from the control of governments. Private electronic media should be moderately assisted, by tax incentives, subsidies given to NGOs through foreign aid programmes, and other legitimate mechanisms, in their efforts to incorporate information and commentary on the realities of the south.

From a strategic, multilevel European perspective, the lines of communication should be kept open at almost any cost. However, two obstacles posed by either the south, most especially fundamentalist sectors in the Arab countries, or the continuation of a unilateralist policy in the United States, may render the intercultural dialogue inoperative. An increase in the selective terrorist attacks against specific sectors of European interests in the Middle East (such as media representatives taken as hostages), and a stubborn confirmation of a pattern in US policy that seems to have as primary objective the continuation of the control exerted by the military and certain economic interests, will result in the breaking of the feeble communication lines with Europe. As surveys and incisive analysts have recently proved and shown, the gap between the views of Europe and the United States over sensitive issues (terrorism, Iraq, security) is getting wider <sup>(165)</sup>. Concentrated, autocratic and messianic leadership in the United States, in addition to the diffusion of power and impotence by failed States in the south, will result in an undesirable negative result as an answer to the often-quoted demand of a European telephone number to call in order to obtain effective cooperation. In the words of sceptical observers, the moderates in the south and a US Secretary of State may know 'what number to dial [as a result of a deepening of its foreign policy] to reach Europe – but Europe may not answer the

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<sup>(164)</sup> For examples, see the experimental programmes organised and run by Inter Press Service (IPS).

<sup>(165)</sup> Editorial by *Financial Times* and report by Dombey.

phone' (<sup>166</sup>). That would be the ultimate kiss of death inflicted on the intercultural dialogue and a tragedy for all.

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(<sup>166</sup>) Mowle.

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# W O R K S H O P 5

Euro-Mediterranean dialogue  
and the international challenges  
(The dialogue in the international context)

# A T E L I E R 5

La nécessité du dialogue  
euro-méditerranéen  
et les enjeux internationaux  
(Le dialogue dans le contexte international)

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‘Though this be madness, yet there is method in ‘t.’ (*Hamlet*, ii.2.207)

### I. 31 décembre 2004 – Beyrouth – Présentation

Tout au long de l’année 2004, les tremblements de terre qui secouent le Moyen-Orient, et dont l’épicentre est l’Iraq, semblent emporter les «agents du dialogue» comme autant de fûts de paille. La terreur est à l’ordre du jour, et on peut douter de la capacité humaine à endiguer le flot de l’histoire, lorsque, bien plus modestement, penser cette violence au quotidien est déjà une gageure.

Malgré ces contraintes évidentes, nous avons essayé, à l’occasion de rencontres qui ont eu lieu sur les cinq continents, de tracer en 2004 le fil d’un engagement pour un Moyen-Orient comprenant plus de dialogue, et donc moins de violence. Au gré de contributions présentées à des audiences diverses et soigneusement choisies, en Europe, aux États-Unis, en Australie, en Afrique et en Asie du Sud-Ouest, cette quête a pris des formes variées, dont certaines, militantes, revêtaient à dessein un caractère organisationnel. Cet article en regroupe les moments et les écrits les plus expressifs en trois langues euro-méditerranéennes (et un peu d’italien; les documents originellement en arabe paraissent ici en version anglaise ou française). Les textes sont introduits par une brève présentation contextuelle, l’appareil critique ayant été allégé au strict nécessaire.

Qui dit «militance» dit redites et répétitions, et ces textes ne s’en défendent pas. On y retrouvera autant les balbutiements de l’individu à la recherche d’un monde meilleur que les leitmotifs de thèmes et de crises à caractère universel: crises d’Iraq, de Palestine, du Liban, du Darfour; thèmes de démocratie, de liberté et de justice.

### II. Décembre 2003–février 2004 – Bagdad – «Plan» d’accélération de la souveraineté démocratique

*Note:* Lors de deux visites en Iraq à la fin de 2003 et au début de 2004, à la suite des réunions de travail avec le Deputy Secretary of Defence américain, M. Paul Wolfowitz, nous avons tenté de formuler, avec les principaux acteurs au Conseil de gouvernement à Bagdad, un passage plus rapide à la souveraineté qui soit informé par la préservation de l’union nationale et l’enclenchement d’un processus démocratique reposant en premier lieu sur les Iraquiens. Les deux textes publiés dans le *New York Times* rendent compte de ces visites et du «plan» auquel elles ont donné lieu. L’article suivant, publié dans *L’Orient-Le Jour*, prend acte des retards et erreurs qui ont conduit à la suppression, dans le chaos, du Conseil de gouvernement iraquien. Le dernier article a pour origine une lettre adressée au ministre iraquien des affaires étrangères Hoshiyar Zebari, un collègue de l’époque militante au sein de l’International Committee for a Free Iraq. Parmi ces recommandations, deux ont été inscrites dans la version finale de la résolution 1546 du Conseil de sécurité de juin 2004.

#### II.1. Note to the UN: hands off Iraqi politics <sup>(167)</sup>

When members of the Iraqi Governing Council and L. Paul Bremer III, the American administrator in Baghdad, open talks at the United Nations today, nothing short of the future of the

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<sup>(167)</sup> *New York Times*, 19 January 2004.

region will be at stake. Having come under increasing pressure over its plan to form an Iraqi government without direct elections, the United States is counting on greater United Nations involvement both to help ease the resistance and secure a lasting democracy.

Beyond the involvement of additional stakeholders like France and Germany, can a more determined role on the part of the United Nations translate into government-building? Considering the organisation's dismal record of silence during Saddam Hussein's 30 years of totalitarian rule, I'm not so sure.

Having visited Iraq last month to meet with the leadership there, I think the better solution already lies within the nation's borders. To spend a day at the 25-member Iraqi Governing Council headquarters is to learn what all honest people in the Arab world already admit: the most representative of all governments in the Middle East sits in Baghdad. With all its shortcomings and contradictions, the Council covers the fullest possible spectrum of Iraqi society, from the Islamists to the Communists, and all the strands in between, including Shiites, Sunnis, Kurds, Turkmens and Christians.

The continued disagreements in the United Nations over the justification for overthrowing Saddam Hussein and problems with securing post-war peace mask the one major achievement in the new Iraq: within the Governing Council and outside, freedom reigns supreme. It may sometimes look or sound messy to the rest of the world, but a fledgling democracy often does.

In a heartening sign, no one in Iraq, no matter what side of the debate he is on, is afraid to speak his mind. At the Baghdad airport, for example, an Iraqi employee expressed to me his regret that Saddam Hussein had been caught, and his hope that resistance will survive his arrest.

On the other hand, when I asked Dr Ibrahim Bahr al-Uloum, Iraq's Interim Oil Minister, about criticism by Baathists within his ministry for his close ties to the United States, he shrugged off the possibility of silencing them. This is especially remarkable, given that he had lost several family members to Saddam Hussein's repression.

During my trip, I visited the Bahr al-Uloum home in Najaf, where some 50 tribal leaders from the middle Euphrates valley sang of their attachment to Iraq, Shiism and national unity from the mountain to the marsh. The family's patriarch, Sheikh Muhammad Bahr al-Uloum, a member of the Governing Council and an old friend, is optimistic about Iraq's future. But Sheikh Uloum, who like many struggled for decades against Saddam Hussein's dictatorship, is also upset at what he perceives as mismanagement of his country by the United States. More than eight months after the passing of the *ancien régime*, the scene is of intermittent electricity and phone service, no airport service and surreal lines for gas in a country with the second largest oil reserves.

But security, despite newspaper headlines, is a fleeting concern. After all, armed resistance to the new democratic order has no chance of success against the new spirit of freedom if basic services are restored, and if the national political process takes root. This is clearly the dual challenge ahead, and Iraqis rightly feel they are in the best position to run their country.

The way forward, then, is simple. The 10 members of the Governing Council whom I met with agree on this: the Council, as a national unity government, should be unconditionally recognised as in charge of Iraq's destiny, with the support of the United States-led coalition and whoever else who wishes to join in a democratic course of reconstruction.

As such, the Council would be deemed the official interim government of Iraq – making the United States' plan to select a national assembly by 1 July unnecessary. The Council would be

empowered to draft a constitution and set the parameters for what a new government would look like and when and how it would be elected. In the long term, this would consolidate the whole process of democracy – something Iraqis both in and outside the Council want.

Strengthening the power of Iraqis over their own affairs can come with the proviso that any contender who furthers his own political agenda by violent means should be punished by either being banned from a leadership post or being brought to trial by an international court for those crimes. Human rights monitors, supported by the United Nations or the coalition, should be deployed to further ensure international commitment to the cause of democracy and non-violence.

Today's meeting at the United Nations provides the perfect opportunity to focus the future of Iraq in the right direction: inward. When I met in Baghdad with Naseer Chaderji, a liberal Sunni Arab who sits on the Governing Council, he voiced scepticism of the United States' reaction to a request for an acceleration of Iraqi self-governance. While Paul Bremer was a good listener, Mr Chaderji explained, he was not following suggestions made by Iraqi leaders.

But after discussing the issue with other council members – including Ahmad Chalabi and Ibrahim Jafari, an Islamist Dawa leader – as well as with American officials committed to Middle East democracy, including Paul Wolfowitz, I am more hopeful. I sense that Iraqis and Americans are far more in agreement on the country's future than the controversies there suggest.

Now that the most dictatorial system in the region has been undone, the rest of the world owes Iraq's long-ignored victims a commitment to their national unity government.

## II.2. East meets West, at least on paper <sup>(168)</sup>

It was a rare scene of historical redemption on Monday when Sayyed Muhammad Bahr al-Uloum, a 76-year-old religious scholar and one of the first Iraqis imprisoned and exiled by the Baathist regime in the 1960s, presided over the Iraqi Governing Council as it unanimously approved the country's interim Constitution. But beyond the symbolism of Mr Uloum's role, the document should be seen as an important text for the entire world: in it, East and West meet in an unprecedented manner; it incorporates a salute to Islamic law along with the adoption of federalism and Western-style personal rights for citizens.

Perhaps the most important phrase in the Constitution is in the preamble: the people of Iraq 'reject violence and coercion in all their forms, and particularly when used as instruments of governance'. Agreement on this principle, so contrary to an inordinately cruel 35-year rule, is the most remarkable achievement of the members of the Governing Council. If it holds in their future dealings, and is respected by their followers in power, then Iraq will have achieved its democratic transition.

However, having read the entire 62-article text in Arabic, I have a few problems. It may seem minor, but the language lacks literary elegance, which is particularly unfortunate considering the richness of the classical tradition. It is vital that the final Constitution incorporate phrasing that takes into account the unique Mesopotamian contributions to world legal history – from Hammurabi's tablets to the Iraq Civil Code of 1953, which incorporated concepts and rules of both secular and Islamic law.

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<sup>(168)</sup> *New York Times*, 11 March 2004.

As for the document's content, the West's main concern should not be about the prevalence of Islam – it and all other religions of the Iraqi population are protected against excesses and provocations. Nor should one worry that federalism is not sufficiently stressed – it is frequently mentioned in the text and has been a shared desire of most of Iraq's new leaders since at least 1992, when their colleagues at the University of London demonstrated to them how Malaysia and Nigeria were strengthened as nation States by the adoption of federalism. So long as the Kurdish political leaders, who have enjoyed de facto autonomy for the last decade, accept that federalism means a single nation State, the risk of the issue turning sour is limited.

What most concerns me, however, is the fuzziness and uncertainty over the transition to a permanent and democratically elected government. Sovereignty is to be returned to the Iraqis at the end of June, but there will be no elections this year and no referendum on a final Constitution until 2006. Who will rule in the interim?

The new document mentions the emergence of a government to be decided upon after 'wide consultations'. This body will adopt a series of laws for the creation of a National Assembly of 275 members, to be elected before February 2005. But the text does not further specify how electoral law will be organised. With no stated criteria and no models better than the one that led to the emergence of the unelected Governing Council, how can we hope for smooth and fair elections?

Once the 275-member Assembly is created, not only will it have to do the long work of drafting a final Constitution, it will also choose a 'Presidency Council' of three officials, who will decide on a variety of matters including the appointment of a temporary government and prime minister.

Those familiar with the Iraqi opposition in its long exile have seen this sort of leadership structure before. The Iraqi National Congress, the umbrella group of exile organisations created in Vienna in 1992, had a leadership council of three men, who chose an 'executive committee' with a president. The Iraqi National Congress fell apart because of personal dissension at the top, and the onset of the civil war among the two main Kurdish factions in 1993. Is it truly sensible to resurrect this power-sharing scheme?

In addition, Article 37 of the Constitution holds that once this Presidency Council is chosen, it can rule only by unanimous decision. That apparently means one man can effectively paralyse the Council.

Two weeks ago in Baghdad I talked with several Governing Council members about my concerns. It became clear to me, if not to them, that disbanding the Council and dismissing the governmental ministers in June will create uncertainty and tension that will far outweigh the benefits gained from forging a more representative body.

It is hard to advocate any shift from the vision of this wonderful new Constitution. But in the interest of Iraq's stability, it would seem wise to abandon the vague plan for new interim bodies and simply have the Governing Council continue to carry out its task for another year. This would allow each of the 25 Governing Council members to get a chance to hold the rotating presidency, including the three women waiting their turns. It would enhance the strength of the Governing Council, allow the return of sovereignty to Iraqis, and remove the stigma of continued occupation. And it is likely the best way to ensure that the Iraqi people will have a chance to vote on the truly democratic government and final Constitution they need.

### II.3. Malgré tout, une leçon de démocratie à Bagdad <sup>(169)</sup>

Adnane Pachachi a payé le prix de son ambition. Quant au jeu d'apprentis sorciers de MM. Powell, Brahimi, Blackwill (l'assistant de Condoleezza Rice qui, avec Paul Bremer, s'est rapidement transformé en un haut-commissaire de l'époque coloniale), il leur a explosé au visage. Il faut espérer qu'ils en tireront la leçon en laissant plus de liberté aux Iraquiens pour décider de leur avenir. Quant à leur candidat Pachachi, qui a laminé ses collègues au Conseil de gouvernement au profit de l'envoyé d'une Organisation des Nations unies (ONU) honnie par les autres leaders iraqiens, les choses se sont finalement retournées contre lui. En novembre 2002, il avait déjà empêché que ne se constitue un gouvernement provisoire en Iraq kurde; il a ignoré depuis novembre dernier un plan d'accélération de la souveraineté iraquienne que la plupart de ses collègues, ainsi que le Pentagone – encore puissant –, soutenaient contre un rôle superfétatoire de l'ONU. Sa carrière politique, à 81 ans, paraît terminée. Il faut espérer que la déconvenue d'Adnane Pachachi comme celle de nombre de protagonistes centraux dans le drame de l'Iraq – Lakhdar Brahimi, Ahmed Chalabi, Paul Wolfowitz, tous des personnages que j'ai bien connus, appréciés et critiqués au fil des ans, tous des personnages qui n'ont pas réussi à faire de l'Iraq le havre de paix et de démocratie auquel ils aspiraient – ne les empêcheront pas de poursuivre cette mission avec enthousiasme, mais avec un peu plus de détachement.

Nous ne sommes pas au bout de nos surprises en Iraq; certaines interviendront au fil d'une violence qui n'est pas prête de s'arrêter. Le dénouement d'hier a surpris, celui qui a porté Iyad Allaoui et Ghazi al-Yaouar, respectivement, à la tête du gouvernement transitoire et de la présidence du pays, comme ont surpris la disgrâce du Pentagone à la suite du scandale d'Abou Ghraib et celle d'Ahmed Chalabi, qui avait combattu ouvertement les Nations unies et appelé à une enquête iraquienne sur les malversations liées au programme «Pétrole contre nourriture» de l'ONU.

Deux réflexions, *in media res*, s'imposent: la première est négative, qui montre combien les disputes au sein de l'Administration américaine, le cynisme de la vieille Europe, les contradictions qui ont précédé et suivi une victoire éclair obèrent l'espoir d'un Iraq démocratique après une dictature de trente-cinq ans. Il faut prendre acte de la réussite des factions violentes – l'organisation qu'a laissée derrière lui Saddam Hussein, les mouvements radicaux à Falloujah, la brutalité de Moqtada Sadr – à empêcher la normalisation. À cela doivent s'ajouter la grande erreur des Américains de ne pas avoir engagé les Iraquiens dans le processus de changement dès avant l'invasion ainsi que l'incertitude qui a dominé leur discours sur la «libération». Dans un kaléidoscope à l'échelle planétaire, chacun donnera une réponse différente à l'échec américain. Le dénouement de ces derniers jours offre cependant une certitude, c'est le message négatif de la journée d'hier: le nouveau gouvernement iraquien est un gouvernement de seconde classe, contrairement au Conseil précédent. Les deux grands leaders kurdes sont représentés par leurs assistants, l'ensemble de la faction Chalabi est mise à l'écart, le courant du libéralisme chiite au sein de la hiérarchie religieuse, dans la figure exceptionnelle des Bahr al-Ouloum, est réduit à néant, et maintenant Pachachi, tous sont pour l'instant écartés. L'union nationale qui caractérisait le Conseil de gouvernement a été galvaudée au profit d'un groupe réduit de dirigeants dont le passé ne présente pas beaucoup de convictions libérales. Mais il y a également un message positif. Le renoncement d'Adnane Pachachi, proclamé président par des fuites téléguidées par l'entourage de MM. Bremer et Brahimi (ce qui a détruit son ambition auprès de ses pairs), n'en est pas moins remarquable comme message d'avenir. Il aurait pu, comme Iyad Allaoui il y a quelques jours, s'accrocher à cette «nomination» et attendre que le monde, et les Iraquiens malgré eux, reconnaissent lentement ce fait accompli. Dans un geste d'homme d'État, il a refusé. L'histoire le lui reconnaîtra, et nous autres démocrates à la recherche désespérée de

<sup>(169)</sup> *L'Orient-Le Jour*, 2 juin 2004.

leaders capables de dire non au poste suprême quand il se profile devant eux, non au *forcing* brutal pour arriver au pouvoir, nous nous devons de le saluer.

Conscient de ces deux messages contradictoires, l'important est de considérer le gouvernement actuel comme un gouvernement transitoire, mais aussi comme un gouvernement effectif. Les Iraquiens ont besoin de paix avant tout, d'une paix qui ne soit pas celle de la peur, mais celle de la légitimité. Pachachi, Chalabi ainsi que les autres leaders iraqiens écartés du gouvernement joueront, il faut l'espérer, un jeu démocratique qui les ramènera peut-être au pouvoir. Le prochain drame, lui, se passera la semaine prochaine au Conseil de sécurité sur la souveraineté en Iraq.

#### II.4. Letter to the Foreign Minister of Iraq: fixing Security Council Resolution 1546 (adoptée le 8 juin 2004) <sup>(170)</sup>

HE Hoshyar Zebari  
Foreign Minister of Iraq

3 June 2004

My dear Hoshyar,

It is 15 years ago now since we first met in that obscure room of London University as guests of our London colleague, Sami Zubeida – another great Iraqi talent that brutal intolerance lost to the West. We were heartened that day to discover that more people cared for the fundamental rights of Iraqis than transpired on decision-making during the Gulf War. Against *realpolitik*, we have since doggedly worked for a federal, democratic Iraq, in a long, painful effort that has taken us to Vienna, Iraqi Kurdistan, New York, London, and so many other places, and which has now brought you as the foreign minister for the most sensitive country on earth.

The journey towards Iraqi democracy may have just started with, at last, an Iraqi democrat making his voice heard in the making of the next UN resolution. This is an occasion for which it is difficult to conceive a more important responsibility, and it will be useful to expose again – as you did to much effect earlier this year – some of those leaders in the UN and on the Security Council who are trying to claw back their role in Iraq on the setbacks of US policy: they should be openly reminded how they supported, until the last minute, the dictator in power.

... Now to the long-winded, arrogant current UN draft. Being in the trade, you and I know that diplomats and lawyers are verbose, and you must ensure that this ridiculously long resolution is pared down to what is essential. You recall our distress with Resolution 687 of 3 April 1988 which, despite remaining the longest in the history of the UN, managed to keep Saddam Hussein in power after the liberation of Kuwait.

How should the resolution be reduced to what is essential to enhancing the chances for Iraqi democracy? Let me suggest you restrict it to four key thoughts: withdrawal of foreign troops, common sense, federalism, and human rights monitors, and four simple clauses.

*Withdrawal of foreign troops.* By suggesting that the Iraqi government can request the withdrawal of the occupying armies, be they UN or multinational, an improvement of sorts has been achieved in the current, second, draft. But you know how weak the present government is,

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<sup>(170)</sup> Texte publié en arabe dans le *Nahar* du 5 juin 2004.



which does not even include the two historic Kurdish leaders in positions of responsibility. Something more convincing is needed, which is a timetable for effective withdrawal of non-Iraqi troops over a period of months. Such withdrawal can be achieved in stages, with the proper surrendering of power to the Iraqi authorities as fits the situation in the various regions. There is a risk for redoubled violence being meted out by all kinds of bloodthirsty and immoral factions to prevent normalisation. If that happens, there is no harm in coming back to the Security Council to ask for a different arrangement. But it is imperative that Iraqis start seeing foreign soldiers withdrawing, and not more boots on the ground which keep sovereignty as a sham. You have already done it in Kurdistan, where I understand less than 300 soldiers remain to support the local authorities. This should be your model, and here is your first clause: 'Withdrawal of non-Iraqi troops will start at once, according to a timetable agreed with the Iraqi government, to be completed within two years...'

*Common sense about elections.* While the new condition of the second draft of the UN resolution under discussion — achievement of the political process — may appear at first as a good idea, the reason why elections have not taken place yet in Iraq is because of brutal factions who do not want a new, peaceful Iraq to emerge. These people, the Zarqawis, Muqtada Sadrs and Duris will continue to kill indiscriminately, you can be sure. Still, you will not be able to convince your people, let alone the world, that the presence of foreign troops is transitional if one does not see a tangible process that starts immediately in consonance with everyone's hopes, including for US soldiers who should never have been asked to sacrifice their lives for the sake of Iraqi democracy.

Now much has been vested over the past year in the electoral process, and the draft text (and the interim constitution) insist on elections taking place before January 2005. That would be great, but here is where common sense is needed. Let us be serious: how can you conduct national elections in Najaf or Kufa today, or in Falluja? The same groups which have committed all these killings will not stop in their search to restore the old order or some sectarian, messianic concept of Iraq. They must not be given dates to tamper with. The electoral system should be severed from any other contingency, and more flexibility built into it. This is your business, not that of the UN. Let them just acknowledge your interim arrangements, and we can help you conduct free elections in Kurdish Iraq as we did in May 1992 in the teeth of the US government and all regional actors, as a model for the rest of the country to follow. So clause 2 of the SC resolution consists in ridding it from most clauses linking elections to 'Iraqi sovereignty' and/or 'military arrangements'. You just need to have it declare that the occupation is over, and that Iraqis are in charge of their democratic destiny. And while you are paring down the verbosity of lawyers and diplomats, please make sure that the 'leading role' ascribed to the UN and its representative disappears from the text.

*Federalism.* Only through a federal system can the various sections that compose Iraq be offered some protection. It is unfortunate not to see a Kurd as the president of Iraq, or as Prime Minister. You know the argument emphatically put to Masoud Barzani and Jalal Talibani since our early encounters in London in 1990: unless Kurds are secured a serious say in decision-making *in Baghdad*, there will be no end to their marginality and oppression. This is what federalism means: an effective participation in decision-making at the centre. This active participation in central decision-making is more important than the rights of Kurds in Kurdistan, which even Saddam could only dispute by the use of chemical weapons and systematic fear. We must not shy before this word, either for our peoples in Iraq and the Middle East at large, or internationally. Defend its inclusion in the Security Council resolution.

*Human rights monitors.* All the above is secondary to the deployment of human rights monitors in Iraq. You know how much we fought for that, the support to Max van der Stoep, the UN

special representative for human rights in the wake of our joint demands, and the resistance of Boutros-Boutros Ghali and then Kofi Annan to the idea. We shared, time and again, the efforts at the UN and elsewhere, especially during the terrible days of the Kurdish civil war, to have human right observers on the ground. You should convey to a world eager to hear what you will request openly from that resolution, that human rights should be monitored, especially after Abou Ghreïb and the continued violence by brutal factions in Iraq against everyone: passers by, foreign soldiers, Governing Council members, let alone systematic sabotage to prevent a modicum of daily security. The whole role of the UN is superfluous, including all the monies promised, without a rule of law emerging in Iraq. Get rule of law in Baghdad, and everything, including foreign investment, will follow. So one short final clause: human rights observers in Iraq. Again, they could be deployed in Kurdish Iraq as soon as tomorrow morning.

Good luck. Your success in New York will determine also our future.  
Yours in all seasons,

### III. 3 avril 2004 – Palerme – Pour une Méditerranée cosmopolite <sup>(171)</sup>

*Note:* Au début d'avril 2004, une conférence réunie à Palerme sous l'égide de syndicats chrétiens européens, notamment le Movimento Cristiano Lavorato d'Italie, a permis de tendre un pont vers la société civile européenne sur un sujet tout aussi réel que symbolique du conflit entre les deux rives. Nous avons choisi l'occasion pour traiter de Jérusalem, ville cosmopolite par ses trois religions.

We are here for the vindication of a plural, cosmopolitan, Mediterranean. We know the gap between the southern and eastern shores, and the northern ones, included or about to be all included in the EU. And since the most significant frontier for the European Union is clearly the non-European Mediterranean, this presentation focuses on one of the most egregious rejections of plurality in the whole region, both in material and in symbolic, spiritual terms.

We do not need to belabour the symbolic dimension, save perhaps to say that symbol and reality merge tragically in Jerusalem. My closer interest in the city comes from the alleged floundering of the Oslo accords during the last negotiations between Israelis and Palestinians, at Camp David in the summer of 2000, over Jerusalem. And it is in Jerusalem that the Intifada started physically, in the wake of the visit of Ariel Sharon on 28 September to the city. 'Ariel Sharon knew what he was doing on September 28, 2000'. (Amos Elon, 'The Deadlocked City', *The New York Review of Books*, 18 October 2001.) The deliberate provocation achieved what he hoped for: demonstrations against Sharon's visit, leading in turn to the unleashing of Israeli violence which claimed several Palestinian casualties. The Second Intifada, as an unusually consensual narrative admits it, 'officially' started on 28 September 2000. One will note that all the plans forged in Washington and at the UN to bring a halt to the killings put the collapse of the Oslo peace process at this very date.

Because this basic fact is forgotten, it is important to underline it. Ariel Sharon 'officially' started the Intifada, which has not stopped since, and its first victims were all Palestinian. The Intifada will not end so long as the engineer of violence that day, a man who started it in a classically Machiavellian way to become Prime Minister of Israel, remains in a position of responsibility.

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<sup>(171)</sup> 'Il Mediterraneo tra esperienze cosmopolite e isole-monoculturali: il caso di Gerusalemme', Conference on the EU and the Mediterranean, organised by the Movimento Cristiano Lavorato, the Europäisches Zentrum Für Arbeitnehmerfragen, and the Ente Addestramento Lavoratori, Palermo, 2 to 4 April 2004.

So Jerusalem, city of peace, has turned into the focal point of intolerance in the Middle East, both symbolically and materially. This, alas, is not new, and the synthetic history of Jerusalem presented by Bernard Wasserstein (*Divided Jerusalem: The Struggle for the Holy City*, Yale University Press, 2001) shows the regularity over the past century of a pattern of cataclysmic Arab versus Israeli violence starting or culminating in the Holy City. Beyond that dimension, which will continue to elude those searching for peace for a long time to come, the present study wishes to dwell on a structural phenomenon which makes the issue graver and even more intractable.

Any discussion of Jerusalem has so far operated within the general framework of the Arab-Israeli framework. For the full historic mosaic of the city to obtain, this is simply not sufficient, because it carefully eludes the main trait that has ignored a critical component of Jerusalem: its Christian dimension.

For this different, even more tragic development in the modern history of the city, one can start with the conclusions of a paper completed two years ago by one of the best specialists of Jerusalem, Drew Christiansen SJ, namely that preserving the city's Christian population, and by extension, the Christians of the Holy Land, 'would require a miracle'. In other words, Christian Jerusalem is no more, because there are no Christians left in Jerusalem. The dramatic decline of Christian residents of the city is patent: in 1893, Christians represented 13 % of the people of the Holy Land, in 2000, they are barely 2 %. In Jerusalem proper, 30 000 Christians lived in 1944. They were still some 27 000 in 1967, when Israel occupied the city. According to some accounts, they are now fewer than 4 000.

In the Camp David negotiations four years ago, two phenomena stuck out in the otherwise traditional clash over sovereignty between the undifferentiated categories of Israelis (i.e. Jews), and Arabs (i.e. non-Jews), — alternatively of Israelis (i.e. Jews), and Palestinians (i.e. non-Jews). The first oddity was that in the marathon discussions under President Clinton's aegis, the impossibility to bridge the gap between the conflicting sovereignty claims of the two leaders assumed, throughout, that Ehud Barak was speaking for Israeli sovereignty over the whole city, while Yasser Arafat wanted the recognition of full (or quasi-full) Palestinian sovereignty over the eastern Arab side of the city.

The question was not, one noted then already, that simple: was Barak defending Israeli or Jewish sovereignty, and was Arafat standing for Palestinian or Muslim interests? Were we witnessing in the conflict over sovereignty a simple national clash for Jerusalem as capital of the State of Israel as against the capital of the (State of) Palestine?

Or should the complexity be extended much further afield to Jerusalem as the Holy City for the three great historical monotheistic religions? On this qualification depends the future of Jerusalem and the Holy Land, and, I would respectfully submit, a plural Mediterranean.

Despite the tireless rhetoric over the sacredness of Jerusalem for the three religions, the little which has surfaced from the two-week pow-wow in Camp David sounded dominantly sectarian: Barak, no doubt, was talking about the eternal capital of the Jews, and his 'one Israel', we have learned over the past 50 years, is an exclusively 'one Jewish Israel'. In a sense, the equation of Israel with Jewishness, at the expense of the equality of all its citizens, is hardly surprising. Israel is, by definition, a Jewish State.

The case on the other side is more troublesome. The so-far muted alliance of convenience between Christians and Muslims, an alliance largely driven by the Judaisation of Jerusalem — incidentally a problem for less fanatical Jews themselves — fails to secure Christian rights as a key component for any solution vesting in plurality.

This is at the core of the first oddity, which is that Christians of the Holy Land continue to be represented vicariously, while their physical presence is dwindling to the point of oblivion.

The second oddity emerged from a brief declaration by Madeleine Albright in her visit to Rome on 1 August 2000, as the talks were going on: 'At Camp David certainly, the issue of internationalisation was not the solution to it,' she said. What does this reference to internationalisation entail, and why was the US Secretary of State so dismissive of it?

The two oddities are not unrelated, and disregard at Camp David for the international status of the city – which is the arguably established position in international law over Jerusalem – results from the absence of formal Christian representation at the negotiating table. Insofar as Jewish and Muslim representation dominated the negotiating table, and the American broker was hardly a Christian broker, one understands better the exercise in damage limitation which was carried out in the Vatican, after the fact, by the Secretary of State.

For better or worse, then, including the risk of tying a further knot to an already intractable file, Jerusalem must be reclaimed as the Holy City for Christians also. The recurring rhetorical reference to its sanctity and importance for all three religions cannot be pursued if we are serious about preserving the city's symbol status of a plural Mediterranean. For that, is needed a dual breakthrough: a diplomatic position forcing Christian representation on the negotiating table, on equal footing with the other two religious representatives, and a legal position that does not relegate Christians to a mere rank of pilgrims and tourists under the sufferance of Jewish or Muslim sovereignties.

Let us probe further these two avenues. Neither representation nor legal status is a simple proposal. While it will come as shocking, at first, for Christians to take some distance from equally victimised Muslim Jerusalemites, the logic of 'city holiness' is simply too powerful for such fig-leaves to endure any longer. And while this approach risks provoking a grave split within Palestinian society along sectarian lines, a direct representation of Christian interests is needed because the fig-leaf cannot mask a dominant sectarian logic playing itself out with no restraint.

One understands, in Israel's continuous victimisation and hemming in, with a purpose to drive them out, of all Jerusalemites of non-Jewish denominations, why Muslims and Christians huddle in as a tight front under 'Arab' leadership. But the tragic fate of Christian Jerusalem requires those directly interested in not disappearing from the map – literally, the first time since Christ – to reclaim the mantle of their representation. Who can bear such a mantle is a difficult question in view of the ethnic cleansing of the Holy Land's Christians over the past century, but Camp David has forced the issue of Christian Jerusalem on the world in a way which needs to be henceforth addressed in more attentive terms.

As for the contours of the 'final' legal status, here also a revolution of sorts is needed, because Muslim (even presented as Palestinian) and Jewish (Israeli) sovereignties exclude, by their very nature, Christian rights. In other words, the legal status of Jerusalem must also accommodate the right to Christian sovereignty over the city. True, Christians are far less numerous than Muslims and Jews, but this is as much a fact of the ruthless policy of Judaisation over the century, doubling up recently in the counterlogic of Islamisation, as it is because of their improper representation at the negotiating table. This will not be possible until a more serious re-examination of 'internationalisation' as legal solution. Innovation here is not needed, and a firm international law precedent can be found in the UN-adopted Statute of the City of Jerusalem known as the 'corpus separatum'. That statute, approved by the UN Trusteeship Council in 1950, consecrates in law Jerusalem's 'special international regime'.

A seachange is needed for an approach to Jerusalem which would conform with a view of international law in tune with a plural philosophy of the Mediterranean, including both the symbolic and material status of the city for all three world religions. Diplomatically, a full, comprehensive, representation is needed at the negotiating table for Christianity. In law, a determined share of sovereignty is required to acknowledge the Holy City's special international regime. Without those two conditions, there is no future for Christian Jerusalem, let alone for a plural Mediterranean. Considering the reality of physically vanishing Christians in the Holy Land, part of that mantle needs to be donned from outside. Hence the choice of the present, important forum to conjure up this dark reminder of what is needed on the eastern shores of the Mediterranean for it to be plural and cosmopolitan.

What can be done? The technical dimensions of international law, with the several layers of texts since the frozen *Corpus Separatum* should not dent a resolve based on the principle of a City for all three religions, and governed by members of all three religions. Even in the tight discussions between the Israeli government and the Vatican, the concept of equality (for Christians) was carefully preserved in the 1993 Treaty between the two parties. That concept has been systematically undermined ever since by an active policy of discrimination against Jerusalemites of all non-Jewish persuasions through a full-fledged panoply of administrative measures and budgetary constraints, physical vexations, curtailment of freedom of movement, prevention of return, limitations on permits, land expropriation, and an enhanced policy of Jewish settlements.

Each one of these policies is identifiable, stoppable, and reversible under established principles of international law, and the Israeli government will be forced, hopefully by a majority of decent Israeli citizens, to confront these violations sooner or later. Nor is the discrimination limited to East Jerusalem and the neighbourhoods occupied and annexed in 1967. Christian Jerusalemites in particular know that their greatest density was in West Jerusalem since the end of the 19th century, and that the properties confiscated upon their forced flight in 1948 are not confined to the Old City.

Lawyers will find a way out once the principle of coexistence, of mosaic, of humanism, of tolerance are admitted as the centre of the preoccupation with the Arab-Israeli conflict. The EU offers many a model, not least the one about to be established in Cyprus, and it may take the enlargement to encompass Lebanon and Israel, as in the proposal of a traditional 'Zionist', to make the Land holy again. (See Mallat, 'George Weidenfeld's bright idea', *The Daily Star*, August 2003.) Even more than Paris, Jerusalem deserves a mess.

#### IV. 14 mai – Vienne – Asymétrie et *Ungeheuer* <sup>(172)</sup>

Note: À l'invitation de l'ancien vice-chancelier autrichien, Dr Erhard Busek, un texte sur les «formes nouvelles de la guerre» avait été préparé pour le colloque qu'il organise à Vienne annuellement sur la globalisation. Ce texte, qui fait partie d'une étude plus approfondie en cours, s'étant avéré trop technique pour être présenté à la rencontre, les remarques imprévisibles suivantes l'ont remplacé, sur le thème du «monstrueux (en allemand *Ungeheuer*)», thème introduit en matinée par un jeune militaire orientaliste autrichien, Joseph Schröfl, citant une maxime célèbre de Nietzsche. Nous avons été présentés par Dr Busek pour parler *on behalf of the Arab world*, dans une séance qui comprenait également l'ambassadeur américain au Luxembourg offrant le point de vue de son gouvernement.

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<sup>(172)</sup> Vienna, V<sup>th</sup> Globalisation Symposium, 13–14 May 2004.

As you can easily surmise, I am not mandated to speak on behalf of the Arab world. Not that I blame you for having invited me, as it would be particularly dull if any of the foreign ministers or presidents in the Arab world nowadays came to speak to you. I do not speak on behalf of the Arab world, but one central problem in the representation in the Arab world is that ordinary people are better equipped to speak on its behalf than its anointed leaders.

The speech I originally prepared is part of academic work in progress which has been pursued over a number of years on those very issues that we are concerned about in this seminar: globalisation, terrorism, new forms of warfare. But we are running slightly late and it may be more useful to depart from that speech and react to some of the very excellent comments we heard this morning: this will allow a discussion where I am hoping to learn much from you in matters that are particularly difficult, uniquely complex as Dr Busek said. It involves a template of paradigms that are not all too clear yet and that requires much more work in order to see more clearly into the nature of evil that one confronts at the dawn of the 21st century, and into the solutions one could find for this evil.

Evil is a loaded, unpleasant word, and the quote from Nietzsche – the master who went beyond good and evil – which introduced '*Ungeheuer*' into our debate is therefore particularly enriching. One cannot even start any form of discussion or reflection to improve upon things if one does not note the particular grotesque form of evil which is growing amongst us, this monstrous, *Ungeheuer* dimension that we are witnessing nowadays in the crudest forms of violence, latest the killing of the young American chap and the video that was made of it. Neither is outside the realm of the *Ungeheuer*, what we saw in the past few weeks rightly shaking America and the world in what has emerged from within the jails of Iraq.

Globalisation and asymmetry are taking place against intolerable forms of monstrosity which involve a public dimension necessitating some reflection on the vectors it chooses for open display. This is internationalisation or globalisation with a particular spatial dimension, and has taken, *inter alia*, the images carried in the horror video released on websites yesterday.

I would like, on a related matter, to focus a bit more on the subject that we are assigned this morning, which is the issue of asymmetry.

I am grateful for Dr Schröfl because it is important to understand what is, and what isn't, novel in the concept. The fact that he has been able to trace asymmetry back to biblical times should warn us against the lure of expressions that seem to offer a novelty because they suddenly sound right. Identification of conceptual novelty is a particularly daunting task. Asymmetry requires therefore some more focused attention.

The other concept which also needs some reflection in terms of its 'novelty' is terrorism, and the following comment should also be viewed as a reaction to the speech of the US Ambassador. It seems to me that the failure of legions of jurists and law makers to define the concept of terrorism over 200 years should perhaps encourage us to think through that concept, which is currently suggested as a 'new' type of modern warfare. I have from my very narrow legal point of view chosen, also out of conviction, never to use that in order to depict the political violence that we are witnessing nowadays.

What other words can we use? Well, as a lawyer from the Arab world, the greatest problem we have faced since the attacks of September 11 is the bandying about, with little critical sense, of the concept of 'terrorism', both from Western governments and our own. 'Attack' is another puzzling word. There was something special in 9/11 that should force us to wonder why these horrors have been called 'attacks' and why the legal concept that has been paralleling this word was 'terrorism'.

This, I have argued elsewhere, is a serious, strategic mistake on the part of the United States government, which imposed the word and the world view that derives from it at a time when many of us lawyers have learned on the very benches of US law schools that it was impossible, counterproductive and mistaken to try incorporating the concept of terrorism as crime under international law: 'terrorism' simply does not bear enough specificity in order to be differentiated from other crimes that trigger responsibility and punishment. To be more specific, we have learnt in working towards the Convention of Rome in 1998 that resulted in the establishment of the International Criminal Court that the four concepts that trigger action by the prosecution in the International Criminal Court do not include terrorism. However, they do include the particularly important concept of 'crimes against humanity'. One has endeavoured, like Antonio Cassese, like Mary Robinson, to correct this erring, with the failure that you can hear every day in the repetitive incantations about 'terrorism' the world over.

As for the depiction that what happened on 9/11 was an attack: of course it was an attack. But much more important is the question we should ask ourselves about what characterised this attack, as against thousands of attacks that take place across the globe every single day. The answer is relatively simple: what happened on 9/11 is a massacre. We actually never conceive of 9/11 as a massacre, discuss it as such, and examine the legal category that attaches to what, in lay parlance, is considered a 'massacre': the category known in international law as crime against humanity.

So instead of massacre and crime against humanity, we keep hearing of attacks and terrorism. But unless we work to replace your definition, Mr Ambassador, we are bound to confront, time and again, a dead-end. Terrorism as you use it appears to derive from a considered definition, but it inevitably fails, including because of the political dimension that it carries. The United States and the rest of the world, reacting to this *Ungeheuer*, a continuous monstrosity that will strike again, I am sure, must use the tools that seasoned law offers, because it is in law that the difference gets made between a process that leads to the punishment of people who are using violence for purposes that are political and those who may be exercising a legitimate use of force. It is this rooting in law that makes a difference over the years between the two types of violence, that is between the sort of asymmetric violence sub-national groups are exercising in ways that are not acceptable and the violence in return that States carry out, both domestically and internationally, and which might, in some circumstances, be accepted, even occasionally required.

The strategic problem that the United States has faced since 9/11 gets exposed primarily by the fact that it is not ready to consider that a legal process is necessary – even if the financial dimension, for example, tends to be carried out by the US government through law. And yet the legal process is vital to make the difference in the use and misuse of political violence as the central battle for the 21st century.

Within this strategic choice there are problems, sure. There is the problem of efficiency, and that of asymmetry. And to mention also the EU, because Mr Voggenhuber [Austrian MEP and speaker at the Vienna conference] has worked on the Convention, one should consider, facing the *Ungeheuer* that has plagued us in such a dramatic way since 9/11, one great failure of the European Convention in addressing *Ungeheuer* by means that are, for all intents and purposes, legal. This is indeed the problem for the European Union's 21st century, and gets illustrated by the absence of a European prosecutor emerging out of the Convention. By striking out the proposal of a European prosecutor, the EU has shot itself in the foot by closing a major avenue to deal legally with *Ungeheuer*. I am sorry, Europol is not capable on its own to deal with *Ungeheuer*. It requires a judge for the legal process to make sense. Similarly the army, as we saw in Iraq, is incapable, on its own, of addressing violence, without some legal process usually over-

seen by a judge. Only that judicial control can raise the reaction to *Ungeheuer* from one which is routed in pure violence – and eventual *Ungeheuer* itself – to one which can be acceptable to civilisations defining themselves primarily in terms of States ruled by law.

Let me try to end with two problems that come with an alternative world view that privileges law as its defining criterion, in an area of conflict which is still governed by the extraordinary template of war that Clausewitz has offered us in *Vom Krieg*. One faces indeed, against that template, two types of dilemmas: one is technical. In the history of warfare there is an element that is always unpredictable and, Dr Schröfl will correct me, that is technological change. We must therefore think more carefully about the brutal, basic and unintelligent – one is tired from hearing that the uses of mass murder are 'brilliant' – use of planes to hit the twin towers; we must think hard about the use of sarin gas in Tokyo's underground as a serious prodrome of what the change in warfare might mean, with warfare being extensively defined as human beings doing mass harm to other human beings. The nature of a technological change and its globalisation is one that requires a lot of work. Since it is impossible to predict how technological changes develop and how you can control them to avoid weaponisation, especially when they become so accessible and so 'democratised', we will not have easy answers, including to the dirty little bomb that one or the other *Ungeheuer* agent will be able to manufacture before too long and deliver. This is one aspect requiring more Clausewitzian, in-depth reflection.

There is another important area of the vexing dilemma brought about by asymmetry: we could describe it as the fact that all these sub-national units operating internationally would not be able to operate internationally if between them and the international scene there were a State that subjected their operations to some form of control. The problem one faces, and that brings us back to Dr Busek and the problem of 'representation of the Arab world', is that none of the Arab countries – and there is a Middle Eastern specificity in 9/11, offers a model of a State governed by rule of law. Not one country in the Middle East is a democracy, and it is on these States that one is relying to hem in the monstrosity that has emerged in 9/11. That creates a serious dilemma, because you Westerners rely on States that do not believe in the rule of law.

Indeed, the most effective convention amongst Arab countries is the Convention against Terrorism which was passed in 1999. Terrorism is the perfect tool for the arbitrariness of Arab governments dealing with their dissidents. And foremost among these dissidents those who use mere words to ask for change. We have to think a bit more creatively on the issue of the lack of democracy in the Middle East as one major, decisive, dimension in the limitations to be put on this *Ungeheuer*. One is asking *Ungeheuer* systems to put an end to the state of *Ungeheuer* which characterises the Middle East, and the ensuing dilemma can only be described as serious. Ladies and gentlemen, the Saudi system is a monstrosity: unless this is seriously being dealt with, we are not going anywhere, and there is, in the Gulf, a century-long history of Western collusion with the *Ungeheuer*, with its characteristic propensity to ignore the very peoples that it governs.

This is true across the Middle East: no exception, and I am talking as an academic here. It is not customary for the US Ambassador here present (nor for other European Ambassadors) to include Israel as a non-democratic State in the region. This is wrong, and we have discussed this matter at length on other occasions, because Israel is part and parcel of *Ungeheuer* that has plagued the Middle East ever since its establishment in 1948, as is part of it the dedicated support it has received from the West over the past 50 years. Support to Israel is one additional problem of association with governments that are anything but *Ungeheuer*.

These forms of asymmetry result, I am afraid, in international monstrosities such as we saw on 9/11. In the Middle East, Israel should be defined for what it is, a monstrous State, which



emerged from the replacement by force of the population from its native land by one brought from outside. This same pattern continues to date: Israel controls not only the Jewish population present in historic Palestine, but it has controlled for the past 50 years of its existence an ever larger non-Jewish segment, part of which remains on its territory and part of which has been forcibly expelled from that territory and remains outside it by the sheer exercise of force. Unless this *Ungeheuer* gets addressed in candid and express terms; unless one stands up to President Bush giving away a right of return that has been recognised internationally for over 50 years, a right without which Dr Busek could do little in the Balkans; unless we ensure that very basic right for the individual who has been forcibly expelled and continues to be prevented from returning by sheer coercion to his native land, we will not be relieved from *Ungeheuer* in the Middle East. Unless we consider seriously whether we can genuinely talk of Israel as a democracy, I am afraid that the war to end all wars will not even have started.

#### V. 25 mai – Bruxelles – Note critique sur le «rapport des Sages» de la Commission européenne

*Note:* Au printemps 2004, Belén Bernaldo de Quiros, la responsable extrêmement dynamique de l'action Jean Monnet à la Commission européenne, nous a proposé de commenter le rapport des Sages réunis à l'initiative du président de la Commission Romano Prodi. Ce commentaire a été présenté à Bruxelles dans le cadre de la conférence «Les acteurs du dialogue» qui a suivi la publication du rapport. La séance était présidée par Catherine Lalumière, alors vice-présidente du Parlement européen.

De ce rapport des Sages, nous devons retenir le mieux, critiquer le moins bien et écarter le pire.

Le pire, c'est le parlement euro-méditerranéen suggéré. Nos parlements, au sud et à l'est de la Méditerranée, sont des chiffres molles, le lieu privilégié de la corruption politique des gouvernements. En attendant des élections nationales libres, évitons les parlementaires arabes comme acteurs d'un dialogue *utile*.

Le moins bien, c'est le trémolo des «dialogueurs» actuels: il faut faire face à cette réalité amère, qui veut que ceux qui participent au dialogue ne sont importants que dans la mesure où ils sont capables d'aborder la masse des laissés-pour-compte traînant loin derrière par ignorance ou à dessein, et de les intégrer au dialogue.

Ce rapport est bien intentionné, mais l'enjeu mérite plus d'intégrité intellectuelle, voire de cynisme. «Aimons-nous les uns les autres» est un slogan qui appartient aux églises et aux religions, pas aux acteurs d'un dialogue *critique*. Il faut des dialogueurs de choc, et un style franc.

Le meilleur du rapport est sa conscience d'un «retour du politique», souligné en son début, qui l'article sur une *politique* de proximité prônée par la Commission sur la base de la vision de son président, elle-même axée en puissance sur un principe *constitutionnel* (article I-56 du projet de Constitution, «l'UE et son environnement proche»). Oui donc à ces institutions culturelles qu'on veut établir avec fortes finances, oui à une recherche forte sur la Méditerranée (mais en sachant qu'on n'a pas inventé la poudre – voir le projet dirigé pendant près d'une décennie par Robert Ilbert), oui à un plan Marshall de la culture – apprentissage des langues, centres de recherches, diplômes communs, débouchés de travail *libres* –, mais dans un esprit critique qui évite le verbiage creux. Condition d'éviter l'écueil: établir ce «dialogue» avec la société civile par-delà et, si nécessaire, contre les gouvernements autoritaires du Sud. Retour au politique donc, sans ruse de la raison et du style, par le «pouvoir des mots en histoire» (Lucien Febvre, *Michelet et la Renaissance*, Paris 2002, original 1942-43, page 21: «Définition,

formules... Mais précisément, ce que voudrait être ce cours – c'est, en dernière analyse, un essai sur le pouvoir des mots en histoire.». Il faut donc privilégier les acteurs internationaux d'un dialogue-rupture. La paix en Méditerranée, c'est la victoire d'autres acteurs du dialogue que ceux qui, au Sud et à l'Est, y ont jusque-là présidé. Investir dans la culture est une perte de temps si l'objectif *déclaré* du dialogue, dialogue par définition non violent, mais dialogue de rupture musclé et critique, n'affiche pas son objectif de changer les présidents, rois et autres dialogueurs en chef dans les gouvernements du sud et de l'est de la Méditerranée. Au Nord, ce changement est naturel et s'appelle «alternance».

## VI. 15 juin 2004 – Beyrouth – Dictating to dictators <sup>(173)</sup>

*Note:* Deux semaines plus tard, le père John Donohue, directeur du Centre d'études sur le monde arabe moderne (CEMAM) à l'université Saint-Joseph (USJ), organisait une table ronde, avec les collègues libanais Michael Young (op-ed rédacteur du *Daily Star*) et Farid Khazen (professeur en sciences politiques à l'université américaine de Beyrouth), pour voir plus clair dans la pléthore de propositions de réformes occidentales et arabes fusant de toutes parts sur fond d'immobilisme politique et de violence redoublée. Nous avons trouvé utile de présenter une critique des propositions européennes dans le prolongement direct du texte de Bruxelles.

Voici donc ma contribution à la Commission européenne à Bruxelles. Sa dimension un peu abrupte face à des dialogueurs tous azimuts a choqué, mais la crise qui nous enveloppe ne permet plus de mettre les gants d'antan, et force une reconsidération franche qui nous porte – par «nous», j'entends démocrates arabes, européens et américains – à mettre la démocratie à l'ordre du jour.

La différence n'est pas de mise. Le discours de Bruxelles, de Washington et du Caire doit répondre à la vision humaniste que nous partageons. Il y a deux ans déjà, en mai 2002, à la demande d'Anna Lindh, nous avons transmis un texte pour la considération des ministres des affaires étrangères européennes, qui insistait aussi sur les illusions de miser sur l'Amérique contre l'Europe ou vice versa. Ces fossés, illusoire ou réels, ne sont pas utiles, et nos dirigeants tenteront longtemps de jouer le jeu d'une vieille Europe contre une jeune Amérique ou vice versa, comme l'a fait avec un succès mitigé Saddam Hussein. Ces contradictions ne sont pas utiles à des humanistes qui partagent des valeurs fondamentales aussi évidentes que sûres. Au sein même de tous ces pays d'Occident, la fracture est inhérente aux divers acteurs: dans l'insistance sur la démocratie au sein du pouvoir aux États-Unis, les deux factions, avec leurs contradictions secondaires, sont aujourd'hui prises dans une lutte sans merci. En Europe, la situation est plus complexe par le fait de la reproduction de cette fracture dans chacun des pays, et au sein des institutions européennes.

À ce niveau de l'examen des projets, il est plus facile de faire de la prospection prescriptive que de l'analyse. L'analyse se perd aisément entre texte et réalité, et rien n'est plus élastique que la «science politique» autant que les «relations internationales». Après trente ans d'analyse, et vingt ans d'écrits et de militance pour les droits de l'homme, nous couperons, encore une fois aujourd'hui, comme il y a deux semaines à Vienne, comme il y a une semaine à Bruxelles, comme la semaine prochaine au Caire, au plus court: on ne peut dicter aux dictateurs, aux rois du Golfe, de Jordanie et du Maroc, aux dynasties absolues ainsi qu'aux militaires en uniforme présidentiel qu'un seul message: l'alternance. La dictature est aujourd'hui un crime contre l'humanité, après avoir longtemps été un crime contre le peuple.

<sup>(173)</sup> CEMAM Seminar USJ, «Dictating to dictators», 15 juin 2004.

L'abandon du pouvoir peut avoir bien des modalités, mais c'est là le point de départ. Nous n'avons pas attendu l'Europe ou les États-Unis pour le dire; leurs dirigeants sont d'ailleurs très en retard; voyez les grandes réceptions qui continuent de plus belle pour tel ou tel potentat de la région, sans compter les criminels de guerre vieux monde comme Ariel Sharon et Muammar Kadhafi, dont le seul lieu moral et politique de réception est derrière les barreaux de la prison. Il faudra penser ces modalités dans une tentative continue d'affûter le débat, les demandes et l'action. Alternance en Égypte, en Tunisie et au Liban, c'est le respect d'une demande constitutionnelle, échue en octobre 2004, de ne pas rester au pouvoir. Alternance en Syrie, ou en Arabie Saoudite, c'est une demande d'un gouvernement d'union nationale, dont le modèle, trop bref hélas!, a été le Conseil de gouvernement iraquien.

Le reste, ce sont des détails utiles à l'alternance du pouvoir exécutif, mais des détails. Le message n'est pas encore passé en Europe, ou aux États-Unis, à lire toute cette littérature qui nous envahit. Pour le faire passer, les partenaires humanistes des deux côtés de la Méditerranée doivent se retrouver sur ce même message: alternance pacifique au sommet du pouvoir exécutif.

## VII. 7 juillet 2004 – Le Caire – Lancement d'un mouvement démocratique arabe

*Note:* La pléthore de propositions de réformes s'est naturellement assortie d'une pléthore de rencontres. Ces rencontres s'accompagnaient de grandes déclarations qui portaient souvent le nom de la ville où elles avaient lieu: déclarations de Beyrouth, de Sanaa, d'Alexandrie... Après avoir pris part à un certain nombre de ces rencontres, il était clair que leur utilité devenait, en l'absence de structures de maintien et de continuité, de plus en plus mineure. Nous avons tenté d'y remédier à l'occasion d'une rencontre au Caire en juillet grâce au soutien du D' Shaha Riza, responsable de la société civile dans le département «Moyen-Orient» de la Banque mondiale et penseur efficace de la démocratie dans le monde arabe, en aidant à l'établissement d'un noyau de démocrates arabes appelé «Forum pour la réforme démocratique dans les États arabes». Les deux textes qui suivent reprennent, pour le premier, la contribution à la rencontre du Caire sur la réforme et des grandes crises régionales. Le texte suivant est la première déclaration du groupe sur la crise au Darfour soudanais.

### VII.1. Défis externes et priorité ignorée: «La libération de la Palestine et de l'Iraq est-elle une condition pour réformer les États arabes?»<sup>(174)</sup>

Nous avons conclu lors d'études précédentes que la priorité ignorée dans toute discussion sur l'ouverture démocratique était l'alternance présidentielle, car l'alternance de la personne responsable des plus hautes décisions dans tout État est la première condition de démocratie dans l'histoire humaine. Cela, bien sûr, n'empêche pas que l'alternance soit tout aussi nécessaire, de manière également non violente et volontaire, pour le reste des postes politiques dans la société, notamment dans les assemblées législatives, au niveau des parlementaires comme à celui de leurs présidents, ainsi qu'aux divers niveaux de ce qu'on appelle communément la «société civile». Il n'est pas déplacé de rappeler à l'occasion la nécessité de s'opposer à une tendance patente dans de nombreuses organisations civiles – partis politiques ou institutions non gouvernementales traitant de la chose publique – à perpétuer les mandats de leurs dirigeants. Il faut veiller en permanence à la protection du principe d'alternance régulière et organisée à la tête de ces organisations.

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<sup>(174)</sup> «*Tahaddiyat al-kharej wal-awlawiyya al-da'i'a: hal tahrir falastin wal-'iraq shart lil-islam fil-'alam al-'arabi?*» («Les défis externes et la priorité perdue: la libération de la Palestine et de l'Iraq est-elle une condition de réforme dans le monde arabe?»), contribution au colloque sur la réforme organisé par divers centres pour les droits de l'homme en Égypte, 5-7 juillet 2004.

Le principe d'alternance à tous les niveaux de la société — dans la lignée du document d'Alexandrie en son point 6 — conforte les demandes par la société de l'appliquer à la tête du pouvoir exécutif, et suggère une nouvelle méthode qui s'y rapporte dans la question de la Palestine et celle de l'Iraq, qui sont les deux *crises centrales* de notre histoire proche. Car si la question iraquienne a rejoint, par l'intensité des souffrances qui ont affecté le peuple iraquien sur une période de quatre décennies, la crise dominante dans la région arabe au XX<sup>e</sup> siècle qui est celle de Palestine, il faut garder à l'esprit les autres crises persistantes dans le monde arabe, chacune spécifique dans sa sphère étatique, au Sahara occidental, en Algérie, au Soudan, en Somalie, sans compter le registre tragique du gouvernement libyen pendant trente-cinq ans, les guerres passées au Liban et au Yémen, la violence montante au cœur du Royaume d'Arabie saoudite...

La Palestine et l'Iraq ne sont donc pas une exception. Si guerres et crises forment l'intitulé caractéristique de la région, nous devons nous baser sur l'expérience des drames «secondaires» pour traiter des deux crises centrales, drames qui n'en sont pas différents quant à la méthode: nous ne retardons pas notre préoccupation pour la démocratie dans nos États à cause de l'un ou l'autre de ces drames secondaires, qu'il soit interne, comme en Algérie ou en Arabie saoudite, ou régional, comme au Sahara occidental. Il faut donc suivre une méthode semblable pour les deux crises centrales, et nous ne voyons pas l'utilité de l'argument suivant lequel la démocratie devrait être retardée au sein de nos pays sous prétexte de la crise en Palestine, ainsi que tous nos gouvernements continuent à le prôner pour faire l'impasse sur la réforme interne, y ajoutant récemment la crise iraquienne dans un même style de logique approximative et d'argumentation élastique.

Cette habitude de faire l'impasse sur le changement démocratique sous prétexte de la crise en Iraq ou en Palestine ne leurre pas — il me semble — les démocrates arabes sincères, et je ne pense pas que cela soit un argument sérieux dans notre concertation. Mais les tragédies iraquienne et palestinienne requièrent un traitement supplémentaire inspiré de la cohérence dans la vision démocratique de la région dans son ensemble, en ce que cette vision comprend pour faire face aux violations des droits de la personne et des droits collectifs propres à ces deux crises.

Nous devons accepter notre échec dans le traitement des deux crises centrales avec efficacité et conviction, car nous avons souvent ignoré les dimensions démocratiques qui s'y rattachent intrinsèquement. Dans la crise iraquienne autant que dans la crise palestinienne, notre intérêt pour les droits de la personne et pour la démocratie est constamment resté secondaire par rapport à la thèse de l'«intérêt supérieur» avancé par nos gouvernements pour nous détourner de l'exigence du changement interne qui leur est demandé.

Dans notre attitude face au tunnel iraquien pendant près de quarante ans, il s'agissait de couvrir la violence du régime sous prétexte de son opposition à Israël et à l'impérialisme, même lorsque Saddam Hussein avait engagé son pays dans la guerre contre l'Iran, puis dans la conquête du Koweït. Malgré les supplications répétées des opposants irakiens pour les aider dans leurs misères quotidiennes, notre monde arabe dans son ensemble — au niveau gouvernemental comme pour les élites et dans la «rue» — a persisté dans son refus de prêter attention aux demandes de soutien contre la dictature à Bagdad. Nous avons avalisé l'argument de l'«intérêt supérieur» dans la guerre contre l'Iran sous le couvert de l'Iraq formant la «barrière est» du monde arabe, ainsi que l'argument suivant lequel la route de Jérusalem passe par le Koweït.

La réalité est que les choses n'ont pas bien changé après la libération de Bagdad de la dictature et son occupation par les forces américaines et britanniques. Le soutien de la résistance violente sous toutes ses formes passe toujours avant la défense de ce qui permettrait aux Irakiens de gouverner

sans violence. Cela ne veut pas dire qu'il est possible d'asseoir la démocratie sans opposer l'occupation américaine sous ses formes les plus brutales, d'Abou Ghraïb jusqu'à sa confiscation du pouvoir national. Mais toute action sérieuse pour aider à établir un Iraq démocratique passe dans la rue arabe et chez ses dirigeants par une patronisation des Iraquiens au gouvernement — là aussi, sous prétexte de leur manque de légitimité, comme si les membres des gouvernements arabes pouvaient prétendre à plus de légitimité que des gens qui ont lutté des années contre la dictature, et qui tentent aujourd'hui de réussir la transition démocratique en diminuant les pressions extérieures et en organisant des élections nationales — et par une satisfaction affichée à l'égard d'actions dont le moins que l'on puisse dire est qu'elles défient tout sens humain.

Quant à la question palestinienne, elle aussi est grevée de cet «intérêt supérieur» aux droits de l'homme dans cette terre maudite depuis un siècle. Elle aussi bénéficierait d'un traitement différent de celui qui domine dans nos milieux, notamment pour pousser les dirigeants palestiniens à rendre compte de manière démocratique de leurs actions et infractions, d'abord dans l'alternance à la présidence, poste dominé exclusivement par le même personnage depuis près de quarante ans, ensuite dans l'activation de la responsabilité des dirigeants israéliens pour des crimes que le droit international qualifie de «crimes contre l'humanité», ou encore dans un traitement en profondeur de l'échec démocratique dans la nature même de l'État d'Israël.

Dans cette quête pour un avenir démocratique sur la terre de la Palestine historique, on ne peut que souligner l'opposition de l'établissement de deux États indépendants au principe de l'égalité des personnes organiquement liées à cette terre, Israéliens et Palestiniens, ainsi qu'au principe du retour des réfugiés dans leur patrie et de leur dédommagement pour une souffrance ininterrompue depuis près de soixante ans. Voilà pour le principe rétrospectif de responsabilisation, la responsabilité étant un pilier fondamental de la pratique démocratique, mais la méthode est la même dans le tracé prospectif du droit de la personne et de la collectivité dans un cadre qui respecte avant toute autre chose le principe de l'égalité et des libertés, en tête desquelles se trouve en Palestine historique la liberté de mouvement.

Il s'agit donc d'un traitement démocratique des deux questions centrales, en Iraq et en Israël-Palestine, et de la remise à l'ordre du jour de la méthode et des critères qu'il faut alors adopter. Le résultat le plus important de cette nouvelle approche est sans doute le renversement des équilibres difformes qui dominent, ainsi que la confrontation des difficultés dans le cadre oublié de la démocratie et des droits de l'homme. Parmi les conséquences de cette nouvelle approche se dégage la nécessité de constater que le système en vigueur en Israël n'est pas démocratique, et ne l'a jamais été suivant les critères universellement reconnus: là se trouve une bataille des consciences et des convictions à un niveau de persuasion que nous devons gagner par des arguments juridiques et connexes, qui sont au cœur d'un message qu'il faut porter au reste du monde pour convaincre ceux qui persistent à prétendre qu'Israël est un État démocratique, car cet argument est le fondement principal de la politique occidentale dans la région.

L'absence de démocratie en Israël-Palestine nous ramène à la priorité ignorée une génération durant dans l'approche suggérée comme fil conducteur d'analyses et de positions. Nos gouvernements — en tant qu'expressions de nos États, dans ce que l'État représente comme sujet de droit à travers son gouvernement dans le monde — ne peuvent vraiment offrir de contribution sérieuse à ces questions tant qu'ils ne respectent pas eux-mêmes le principe d'alternance non violente au sommet; ils ne seront pas écoutés, quelle que soit leur indignation envers les violations par Israël du droit international (en quoi ils ont raison); et nul ne fera attention à leur demande d'égalité en Palestine — par exemple, dans le cas des dirigeants libyens, leur appel grossier à un État nommé «Isratine» — tant que l'égalité entre les gens n'est pas respectée au

sein de nos États dans des formes constitutionnelles effectives qui permettent le droit compétitif à tout citoyen de briguer la présidence par le biais d'élections libres. Cet obstacle est majeur parce qu'il nous ramène au cœur de notre priorité ignorée, priorité suivant laquelle seul le changement démocratique à la tête de nos sociétés permet une action efficace dans les deux crises centrales. Ce changement est en fait la condition de résolution durable de ces crises, dans leurs dimensions autant interne qu'internationale, avec une conscience claire et un argument décisif.

À la question donc de savoir «si la libération de la Palestine et de l'Iraq est une condition pour réformer les États arabes» répond un argument complexe:

1. Il faut remettre à l'ordre du jour la priorité ignorée dans l'ensemble du monde arabe, à savoir l'alternance sur un mode non violent et civilisé au sommet du pouvoir exécutif.

2. Il n'est pas de priorité démocratique qu'un pays puisse avancer comme argument contre un autre pays, ni de priorité d'une crise sur un pays, ou d'un pays sur une crise. Le mode démocratique est un et indivisible, et ne porte pas en soi de contradiction, interne ou régional, ou de contradiction provisoire ou partielle.

3. Il revient à ceux qui œuvrent pour la réforme démocratique dans leur pays de dénoncer son retard historique sous prétexte d'«intérêt supérieur», que ce soit dans la question de la Palestine ou dans la crise iraquienne, et d'examiner les moyens de corriger cette vision structurellement erronée.

4. Les deux crises centrales se distinguent par des violations accusées et continues des droits de la personne et par l'absence aggravée d'un processus démocratique qui rendent plus urgent, sans avancer une crise contre l'autre, leur traitement humain et juridique.

4.1. Ce traitement se fera en Iraq par le rejet de la violence et par l'habilitation du gouvernement dans ses efforts de transition démocratique, que ce soit dans la mise en œuvre de la responsabilité pour les crimes passés ou dans la réduction des interventions étrangères sous forme de colonialisme, d'occupation ou de domination. Il requiert la création d'instruments de soutien arabe, notamment auprès des organisations de la société civile qui souhaitent aider les Iraquiens à dépasser les scories de la dictature et les drames de l'occupation.

4.2. En Israël-Palestine, l'impératif démocratique impose un changement fondamental dans l'approche, notamment dans les conséquences politiques et pénales dérivant dans chacune des deux sociétés de la responsabilité de leurs dirigeants pour la profonde impasse historique qui prévaut au sein de chacune de ces deux sociétés, comme dans leurs relations entre elles. Il faut repenser une solution démocratique qui consacre le droit de tous, individuels et collectifs, sur la base de l'égalité et de la liberté.

Donc si cette question est juste — et nous pensons qu'elle ne l'est pas, pour être mal posée dans son traitement préférentiel de telle tragédie sur telle autre —, il faut y répondre en avançant la réforme démocratique dans l'expression d'alternance présidentielle dans le monde arabe comme condition de libération de la Palestine et de l'Iraq, et pas le contraire.

## VII.2. Forum for Democratic Reform in the Arab States: Declaration on Darfur

We, the undersigned, members of the Forum for Democratic Reform in the Arab States, join our voices with those Arab and international personalities and institutions who denounced and continue to forcefully denounce the crime of ethnic cleansing in the region of Darfur in Sudan. We are disturbed by the lack of open denunciation of these practices by Arab governments and by a large number of Arab parties, NGOs and opinion leaders – in contrast with the active involvement of regional and international organisations – and demand that the wall of silence typical in current Arab political practice, official and non-official, be henceforth breached. Silence towards the atrocities in Darfur is no different from the blanket ignorance of the systemic racial violence of Saddam Hussein's rule towards the Kurds, and from American support to, and European tolerance for, the brutal Israeli actions against Palestinian civilians in the Occupied Territories.

We underline the fact that recent events in Darfur, in their origin and consequence, reveal yet again the degree to which a sectarian and dictatorial government can go in undermining the fate of a nation for the mere purpose of remaining in power, a practice honed by the Sudanese government over years: this is why the emergence of a government elected democratically is an urgent necessity not merely for the protection of liberties, but also for the national survival of the country.

We call upon the Sudanese government to stop immediately the killings, rapes, destruction of homes and farms, expulsion of residents, directly or indirectly by way of its militias, as has been reported by respected international institutions, in a region which has long suffered from drought, desertification and poverty, and we request an Arab/international investigation into the Darfur atrocities, which will consolidate the principle of bringing to trial those responsible for such mass crimes.

22 July 2004

Forum for Democratic Reform in the Arab States:

Hafez Abu Sa'da, Mustafa Bouchachi, Ghanem Jawad, Buchra Belhaj Hamidam, Baheydin Hasan, Dalal Bizri, Isam Khafaji, Muhammad Rumaihi, Jihad Zein, Hussein 'AbdalRazeq, Kamal Labidi, Usama Ghazali Harb, Chibli Mallat, Nehad Nahhas, Farida Naqqash, Murad Allal, Abdelaziz Khamis

### VIII. Septembre 2004 – Beyrouth – Retour sur le drame fondateur en Palestine <sup>(175)</sup>

*Note:* L'étude présentée dans cette section peut sembler de prime abord incongrue. Traitant du drame fondateur en Palestine il y a maintenant plus d'un demi-siècle, elle ne s'inscrit pas naturellement dans le souffle urgent qui sous-tend les autres occasions choisies. Nous l'avons cependant incluse dans cette quête non violente d'un Moyen-Orient meilleur, car elle rappelle la souffrance continue que constituent certains événements marquants de l'histoire de la région, et qu'il serait futile d'évacuer sous prétexte d'ignorance ou d'obsolescence.

I have rarely encountered so much internal resistance to finish a landmark work such as the one discussed in this review. This is not a function of the length of the book. True, *The Birth of the Palestinian Refugee Problem Revisited*, almost three times the size of the original work published in 1988, is a work of unique archival research. But one often regrets that good books are not longer, so captivating do they become as the argument unfolds. Nor did the difficulty in finishing it lie in the fact that it does not carry the full story. True, the author suggests that the narrative will remain incomplete so long as the archives of the Arab capitals are not open, but it is unlikely that they will yield much to undermine the central argument, though archives elsewhere would offer an additional dimension to the history of 1948 Palestinian refugees. In the case of Jordan, it was carried out in Avi Shlaim's seminal work, *Collusion Across the Jordan* (Oxford, 1998), and for other Arab countries in a collection of good essays edited by Eugene Rogan, *The War for Palestine*, Cambridge, 2001, including a chapter by Benny Morris and a formidable concluding essay by the late Edward Said. But *The Birth* is self-sufficient, and the wealth of material, together with the scrupulous attachment to their literal yield, makes it a particularly sober book. So it is not a matter of comprehensiveness. Finally, my difficulty in finishing the book is not because of the author's style. True, the turn-of-phrase is turgid, so interrupted it is by the documentation and its harsh, war-zone military prose. But the material is so rich that style weighs little against the thoroughness and wealth of information.

For me, the labourious effort in reading *The Birth* had a deeper reason, and a simple one at that: nausea. As I picked it up time and again to plod through a few pages, or a chapter, I was taken repeatedly by nausea, that special mental type of nausea where there is nothing physical to give up; a historic-like nausea in reading about the Saint Bartholomew massacre, or Nazi episodes in World War II; a nausea, though, which is not Sartre's or Camus' *mal de vivre*; a nausea which often comes with a report by Amnesty International of a massive human rights violation, or when television stations expose a horror without being gory about it; a nausea that continues to take you over Darfur, Iraq or Central Africa; the nausea of continuous, massive crime. *The Birth* is an occasion for nausea over 600 pages of systematic, relentless, unpunished brutality. This, I think, is why it took me so long to complete it.

The central agent in this brutality is the Jewish community of Palestine. The central victims are the Palestinians. The story recounted by Morris is simply harrowing. He describes five waves of organised violence which afflicted, over a few months, a hapless population with a view to cleansing Palestine of non-Jews – cleaning, cleansing, purifying are recurring words in the archives cited. The first wave started soon after the UN Partition resolution on 29 November 1947, which divided the country in two and gave half of the land to a population which constituted hardly a third of the people living on the Mandate Territory (600 000 Jews, 1 400 000 Arabs), numerically, and owned a mere 6 % of the land – who could accept that, and more importantly, what constituency could claim to express such acceptance? The efforts at cleansing the land were redoubled in March, with the infamous Plan D where the survival of the

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<sup>(175)</sup> *Daily Star*, 4 septembre 2004. «La nausée and Al-Nakba: rewriting 1948», Review of Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*, Cambridge, 2004.



Jewish community was premised on expelling all Arabs in the way or left behind, and continued through the declaration of Israeli independence on 14 May 1948.

Many cleansing 'plans' and 'operations' followed. The third wave took place over a period of 10 days in July, with an exacerbation of the frenzy of killings, rapes and expulsions – a typical statement from one of the soldiers under Moshe Dayan's command: 'I kill everyone who belongs to the enemy camp; man, woman, old person, child' (p. 426); from Allon to Ben Gurion: 'What shall we do with the Arabs?' Ben Gurion, with a dismissive, energetic gesture: 'Expel them' (p. 429). Result of the 10 days in the third wave: 100 000 Arabs in exile. The fourth wave was carried out after another lull following a pointless intervention at the UN. It took place between October and November 1948, shortly after the 17 September 1948 assassination of Count Bernadotte, who had premised the organisation's role on the return of Palestinian refugees. The result: 'Together, operations Hiram and Yoav and their appendages precipitated the flight of roughly 200 000–230 000 Arabs' (p. 492).

While the Israelis adopted 'by consensus' a refusal to accept any return, including a policy to open fire on any villager who tried to return to his house or to harvest land, a fifth wave took place through two subsequent non-war years, from 1948 to 1950. The fifth wave was designed to clear the borders of Arabs with a depth of 5 km to 10 km. Another 40 000 refugees. My own work on the Syrian-Israeli borders, and that of Morris in two other books, shows how the cleansing pattern was consolidated through the 1950s. Any attempt to return is met with death; small villages near the borders, or in demilitarised zones, are emptied of their inhabitants. At the same time, all efforts to reduce the misery of the Palestinian population were reduced diplomatically to naught. Result: some 700 000 (Morris) to 780 000 (Said) Palestinians uprooted. Another 150 000 remained, and 20 % of these were internal refugees who were also prevented from going back to their homes.

Morris does not always express this narrative in so many words, and one would be surprised, if the book were to be put to an easy word-processing test, to see how many 'buts' and 'however's' it includes. Hardly a section, when a particular atrocity is broached, does not include all kinds of qualifiers. While nuances are important, persistent qualifiers against massive ethnic cleansing adds to the feeling of nausea.

Another word-processing exercise would yield more harrowing results. In addition to the killings, what emerges in months of ethnic cleansing is a persistent pattern of looting and, more disturbingly, of rape. I could not keep track of the number of rapes documented in this book, but the sense of nausea is also overwhelming for their recurrence. Documentation of rape as a pattern appears as a particular addendum in the new edition of the book.

*The Birth of the Palestinian Refugee Problem* has a complex history, and the debate it elicited has not abated. Up until the late 1980s, it was taken not so much as given, but as inviolable and sacred truth, that the soon-to-be-Israeli Yishuv settled on land that its Arab occupants had deserted, and had deserted because their superiors had told them to do so. The Zionist foundation myth went so far as to assert that the land in question had been signed away by King Faisal (then peripatetically looking for a crown, which he later found in Iraq) when he entered into an agreement with the Zionist leadership in 1919. With the publication of Morris' *The Birth* in 1988, all that changed. He, and others who joined him, such as Avi Shlaim, Ilan Pappé and Tom Segev, blew a hole through Zionist historiographical defences and gave birth to what was called the 'Revisionist School' of Israeli history. They made a lot of enemies.

Why did the research by Morris constitute such a watershed? Firstly, because it is serious: the archival work is simply staggering. Secondly, because it undermined a number of received

notions, notions that had in fact become taboo to discuss. He pulled the rug from under the received notion that the emptying of Palestine was a simple exchange of populations — Arab Jews from other Arab countries against non-Jews from Palestine, the dating is clearly circumscribed to a phenomenon of cleansing that goes in one single direction: Palestinians. And he attacked the other central notion that Arab governments had called upon the Palestinians to leave. Morris shows that the alleged call by Arab governments for Palestinians to leave their homes was simply untrue, reinforcing the common sense of any decent person: Exile is a tragedy — no one enters into it willingly. But mostly, Morris' book uncovered patterns of massacre, rape and looting.

Much had, of course, already be written about this, attempting to challenge the official early history of the Israeli State. But it was work produced by outsiders: Erskine Childers and Walid Khalidi, in the early 1960s, then Edward Said and Noam Chomsky in the 1970s. It wasn't kosher. Baruch Kimmerling's masterful *Zionism and Territory*, published with some difficulty at the International Relations Center in Berkeley in 1983, came closest to internal dissent, and is acknowledged by Morris in his preface, but the real explosion had to wait until the late 1980s.

The reason that Morris' *The Birth* is so important is because the entire subsequent history of the Palestinian-Israeli conflict must be traced back to 1948. The moment the political problem in Palestine is set at that date, the solution cannot avoid the refugee problem. The debate may get complicated over time, and in 1967 becomes one dominated by 'occupation' and more refugees, UN Security Council Resolution 242 and other resolutions, while lately it has been dominated by Security Council Resolutions 1397 (12 March 2002) and 1515 (19 November 2003), which establish a Palestinian State by 2005, and the International Court of Justice resolution on the separation wall on 9 July. This is all important but does not efface 1948. The point is: the history of Israel, built on the death of Palestine, starts in 1948, not in 1967 or 2000. And Morris gets this right. And he deserves immense praise for having had the courage to confront the truths of 1948 head-on. But if Morris received the acknowledgment of countless historians for having had the guts not to shy away from the details of 1948, he has also heaped on himself the opprobrium of countless others for the conclusions he draws from those details.

A great many countries are born in sin, in utter, revolting violence. No case is more glaring than the whole settlement in the USA and the rest of the Americas, a genocidal process if any. But in the United States, and differently in most of Latin America, a policy of reverse discrimination prevails, including the creation of tax havens transformed into million-dollar-revenue-generating casinos for the descendants of Indian tribes. The American-Indian argument put forward by Morris was easily picked up by Kimmerling: 'Morris has abandoned his historian's mantle and donned the armour of a Jewish chauvinist who wants the Land of Israel completely cleansed from Arabs. Never has any secular public Jewish figure expressed these feelings so clearly and blatantly as Professor Morris did. And, in order to be completely lucid on this point, he drew an analogy between Israel and North America: "Even the great American democracy could not have been created without the annihilation of the Indians. There are cases in which the overall, final good justifies harsh and cruel acts that are committed in the course of history." I do not know today any American historian or social scientist that agrees that the annihilation of the indigenous population of the continent was a necessary condition for the American nation or the constitution of American democracy.' There are no American Indian — 'native American' — refugees in 2004.

In Israel, the original sin continues.

'History,' said Benedetto Croce, 'is always contemporary'. There are degrees in the intensity inflicted by history on current affairs, and this intensity is man-made. The Holocaust is one example, the Palestinian 1948 Exodus another.

The vectors of memory take many shapes, some expressed in sheer violence – the self-immolation of scores of Palestinians mostly from the refugee camps in the West Bank and Gaza is the crudest and most recent. But memory is the business of historians, and history, as the search of what happened – *'wie eigentlich gewesen'* in the celebrated aphorism of the 19th century German historian Ranke – is search for truth. No truth, no history. Once the truth is laid out, as scientifically and accurately as possible, others take up the mantle as political leaders or lawyers in compensation mega-lawsuits. For events like the Holocaust and the 1948 Palestinian Exodus, the decisive word is the historians'.

This is why the works of Morris, as the leading archival historian of what happened in 1948, are central. The rest, that is the consequences, political, legal or otherwise, is not his business. This should help us focus on the book, rather than the author, who has mired himself in recent months in a bizarre comparison between current events and those of 1948, and appears to suggest that the only way out is to drive the rest of the Palestinians living in Palestine out of it. In an infamous *Haaretz* interview in January 2004, the expulsion of the massive majority of the indigenous inhabitants was vindicated crudely as the need 'to break eggs in making an omelette'. The sense of nausea must also be obtained from the capability of a reasoning human being to go to such lengths as advocating a parallel between 1948 and the current civil war: as if by any standards today, or indeed then (as documented elsewhere in the confidence Ben Gurion had of his clear military superiority), the Jewish community was at risk of disappearance in its Palestine settlement. Ultimately, Morris' ratiocinations on the current situation are not important – this is familiar terrain: With all the war crimes uncovered, Morris insists that the struggle was one of survival. 'No choice' is another harrowing sentence of Israel's persistent mythical history. No choice in 1948, in 1956, in 1967, in 1982? In each case, the Israeli leaders started a massive war. And in the latest instance, on 28 September 2000, the official date for the start of the present war, Israeli Prime Minister Ariel Sharon, backed by Ehud Barak, visited the Jerusalem esplanade. Protest followed, with over 200 people wounded and four killed in unarmed demonstrations over 28 and 29 September. They were all Palestinians.

With all this, and the ensuing nausea, I am prepared to give Morris-as-historian the benefit of the doubt. For once his conclusions, when scientifically sound, are offered, the judgment becomes one that belongs to all of us. His argument for expelling the Palestinians of the West Bank and Gaza today, in the same way they were expelled in 1948 are profoundly disappointing and degrading to him, but the book shows beyond doubt, not only the massiveness of the Yishuv-inflicted tragedy in Palestine, but the responsibility of the international community, including the Arab States, Europe and the United States, in not preventing it, or, when it happened, not reversing it. By any standards, the absence of coercive outside intervention to protect a massively victimised population is the one we saw before World War II, during the uprising of the Warsaw ghetto, through to the tragedy unfolding in Darfur. With all its qualifiers, Morris' work leads to this inescapable conclusion: This belongs to a pattern of atrocities and mass crimes of a special, unique magnitude.

This requires a profoundly different view of the military intervention of the Arab States in May 1948. Nineteen forty-eight is not, as the dominant Israeli (and international, including Arab) view still has it, a matter of 'life and death' for the Yishuv. Arab armies were simply impotent to prevent the mass flight of a people, or to reverse it. It was the neighbouring States' moral duty to intervene, as it was for any other power which could do it at the time. The fact is that the world forsook its legal and moral duty to save the Palestinians from ethnic cleansing in 1948.

Simple, serene work is needed that puts this centre stage 50 years hence. Palestine is one land for two people, and it is no longer possible to write a history of Israel that does not include the one struggle that defines it over the past century, and which is bound to define it for the next.

The history of the struggle defines the history of the two communities, this is a central historiographic change in eternally imbricated populations, and it has now picked up pace in several other excellent books, by Baruch Kimmerling, *The Invention and Decline of Israeliness*, California, 2001, and, with Joel Migdal, *The Palestinian People: A History*, new edition Cambridge, Massachusetts, 2003, by Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples*, Cambridge, 2004, and, on the other side – or the same one, actually and potentially, in the works of Nur Maslaha, and to some extent Azmeh Beshara and Yezid Sayegh. One needs more sociology and history that insists on this common destiny, because the future of the two peoples will forever be defined in common.

The search for solutions to persistent problems is always complicated by all sorts of conditions. Such, in 1948, is relative to instances of resistance and killings of Jews by Palestinians, the lingering mystery of the small minority of the 100 000 Palestinians not displaced – here more work is to be done on the Christian and Druze factor, not examined closely enough by Morris – the passage of time and further displacement in 1967, and 'occupation'. Still, the norm is simple and universal: Refugees, irrespective of the reasons for their flight, are entitled to return to their homes. They should also be compensated, but this will depend on a number of factors, including criminal responsibility, and Morris has an interesting note about how most reports of large-scale killings remain closed in the archives. Right of return may be qualified, but it remains the point of departure of morality and law, and cannot be emptied. This is the moral and legal departing position, true for Kosovars as well as Darfur refugees, and is embodied in the case of Palestinians in 'the right of return' UN General Assembly Resolution 194 in December 1948. This is still the official position of the EU, of the United States (despite President George W. Bush's insinuations), and of organisations like Amnesty International.

Since *The Birth* is so contemporary, our concern is this: If such are the facts, that the displacement was systematic, took a logic toward the worse as the battles raged, and resulted in a conviction on the winning side that the return of the refugees is unacceptable, why is the Palestinian State on non-1948 territory being pursued, on the Palestinian side, as the solution? Realpolitik is easily argued: A two-State solution is being pursued exactly because the winning side reckons the right of return is unacceptable. To this end, it has written away the 1948 ethnic cleansing. That is, until Morris, which makes silence – and distortion – no longer tenable.

But realpolitik can be argued in the opposite way, and a groundbreaking realpolitik argument for 'one Palestine-Israel' was made in 'Israel: the alternative', an article by Tony Judt in the *New York Review of Books* in October 2003. Judt flows from Morris. If 1948 underlines the moment the problem became intractable, if the history of Palestine and Israel – which is the same thing – can only be seen as an integrated whole, partition is bound to leave that issue unsolved. There are solutions offered by extremists: massive expulsions, targeted assassinations, destruction of property and walls on the one hand, and the killing of civilian Jews in the hope the rest will flee on the other. These are winning the day, but will not solve the issue either way. They will just add more monstrosities to the grim picture. One day, leaders will search for a different way forward, built more on the equality of people than on the division of land. Compromises were sought in the case of Oslo, and at Camp David. Compromise is now portrayed in America as the withdrawal from Gaza. But this is simply not sufficient, because it ignores the fact that history did not start in 1967. Jews and non-Jews living together are the only way forward, and this is something that both sides need to realise, and that Palestinian leaders must stand for, as they did up till 1974. It might take a generation, but after Kimmerling and his school of current Israeli-Palestinian sociology – of whom Morris for that crucial period of birth-through-ethnic-cleansing in 1948 is a vital source – that logic is implacable. It matters little what Morris says about his 'understanding' of why massive expulsion could be repeated, for that part of the argument is just nauseating, and will remain as an unfortunate idiosyncrasy of yet another historian 'mugged by reality'.

## **IX. Septembre-octobre 2004 – Sydney, Beyrouth, New York – Alternance au sommet: autour de la résolution 1559**

*Note:* Alors que je me trouvais en Australie avec Sadreddine Sadr, le fils de l'imam disparu lors de sa visite officielle en 1978 en Libye, pour lancer la «campagne pour la vérité et la responsabilité» dans l'affaire Musa Sadr, les événements se sont précipités au Liban. Ralliant un soutien fort du gouvernement syrien, contre une résistance libanaise sans précédent autant par son ampleur que par son caractère non violent, le président libanais Emile Lahoud a forcé un amendement constitutionnel pour prolonger son mandat. En réaction, et pour la première fois depuis leurs dissensions en Iraq, les gouvernements américain et français ont joint leurs efforts à l'ONU pour faire passer une résolution condamnant l'amendement et requérant le départ des troupes étrangères. Le premier texte, rédigé à Sydney juste avant le passage de la résolution 1559, annonçait l'imminence de la crise et son sérieux. Deux semaines plus tard, à New York, nous rencontrons Terje Roed Larsen, le responsable à l'ONU du rapport du secrétaire général requis par la résolution. Le deuxième texte est un bref commentaire sur ce rapport.

### **IX.1. A last-minute plea to Bashar Assad <sup>(176)</sup>**

This is the last day, it seems, to make a plea for reason from Syrian President Bashar Assad and Lebanese President Emile Lahoud. This comes from a person who has learnt to appreciate the difficulty of implementing the rule of law in the Middle East.

The only argument put forward to undermine the most important democratic Lebanese offering to the Arab world – the peaceful alternation of power – was one of expediency and, implicitly, of so-called Syrian 'higher national interest'. This argument is flawed. The draft UN resolution seeking to change Syrian behavior in Lebanon, as the text stood on Thursday, will put the Syrian and Lebanese regimes on a collision course with the international community – and with a Security Council whose Resolution 425 Beirut and Damascus used over a period of 22 years to demand the liberation of South Lebanon from Israeli occupation.

A new resolution may also provoke unprecedented damage to the future of Lebanese-Syrian relations. Those who wish to see the two countries violently split apart, as almost happened in the worst days of the Israeli invasion of 1982, will welcome the UN decision, which calls for a withdrawal of Syrian troops from Lebanon and free and fair elections. While it is true that no decent leader in the world, including the Lebanese and Syrian presidents, would contest the principles of Lebanese sovereignty and democracy, with Syria put on notice to implement these forthwith we could enter a struggle that may tear the fabric of Lebanese society. This, in turn, may undermine any hope of gradual, non-violent reform within Syria and increase the country's regional and international isolation. Given the 'regime change' in Iraq last year, at least some Arab countries will stand openly against Syrian policy in Lebanon.

Even more gravely, the UN resolution may lead to a situation where Lebanon's religious communities enter into conflict one with the other. The deliberate effort to ignore the consensus built around Maronite Patriarch Nasrallah Butros Sfeir – who has adhered to a position supporting both Lebanese sovereignty and democracy, but also cordial relations between Lebanon and Syria – will give way to extremism coming from the worst fringes of Lebanese society, and will be fueled by a logic of international intervention.

However, Lahoud and Assad should also know that the argument put forward by Lebanon's Foreign Ministry, namely that the outside world has no business interfering in Lebanese-Syrian

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<sup>(176)</sup> *Nahar*, 2 septembre 2004. *Daily Star*, 3 septembre 2004. La résolution 1559 a été adoptée le soir du 3 septembre, heure de Beyrouth.

affairs, is erroneous in its reading of international law. Syria's presence in Lebanon and Israel's invasion were always, by their very nature, subject to international scrutiny. When, as has happened in the past two weeks, coercion was so manifestly exercised by Damascus against the will of the Lebanese people and their leaders, it was not only the right, but also the duty, of the international community to intercede.

Worst, Syria's and Lebanon's discounting of the UN resolution would only increase outside pressure. This may eventually lead to calls for the UN's demands to be implemented through sanctions or, even, military means.

That is not necessary. Whatever is said officially in Lebanon in favour of an extended Lahoud mandate, whether by Foreign Minister Jean Obeid (who, everyone knows, is eager to be president), Prime Minister Rafik Hariri, Speaker Nabih Berri, Deputy Speaker Elie Firzli, or others, is simply not an expression of their personal convictions, or that of their followers. It is a grave error to spite the unique unanimity the Lebanese have developed in favour of changing their president, irrespective of the quality of the holder of the position. By ignoring this, however, Lahoud may see his name blackened when this period of Lebanon's history is eventually written about.

Decent Lebanese democrats, who wish to avoid more blood being shed in the Middle East, can help devise an alternative resolution if Lebanon's constitutional process is reinstated. Bashar Assad must change direction and persuade Lahoud, at this strategically key moment for Syria and Lebanon, to stop his unconstitutional, undemocratic bid for an extended mandate.

## IX.2. The forgotten side of Resolution 1559 <sup>(177)</sup>

UN Secretary-General Kofi Annan's words in his report issued last Friday on the implementation of Resolution 1559 and the extension of Lebanese President Emile Lahoud's mandate should be saluted. If taken up seriously by the Security Council this week, they provide a missing ingredient in response to a perennial problem that has afflicted the Middle East during the last four decades: the absence of a regular, non-violent alternation of power at the top.

To quote from Annan's report (written by Terje Roed-Larsen, who nevertheless was quoting from a previous statement of the Secretary-General), 'governments and leaders should not hold on to office beyond prescribed term limits'.

I commend Annan because I have repeatedly had my differences with the Secretary-General on his points of emphasis in various matters Middle Eastern. He has not been forthcoming enough in opposing the positions of the Israeli government of Prime Minister Ariel Sharon, though it has systematically undermined the efforts of the Quartet in its search for a comprehensive peace. On Iraq, Annan was too often ambiguous in his dealings with Saddam Hussein. In 1998, for example, he personally engineered a diplomatic exit for the Iraqi leader at the time of the imbroglio over inspections of the presidential palaces, unnecessarily delaying a showdown with the Iraqi regime. More importantly, Annan was unable last year to chart a way out for the UN amid divisions in the organisation over Iraq, culminating in its post-war departure from the country after the bomb attack against its headquarters in Baghdad.

Many in Syria and Lebanon have already brushed aside Annan's statements on Resolution 1559. However, that does not really matter, as much depends on what the Security Council will do this

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<sup>(177)</sup> *Daily Star*, mardi 5 octobre 2004.

week with the Secretary-General's devastatingly accurate diagnosis of the Syrian-Lebanese relationship.

It is important that there be no letup by the Security Council in addressing, first in order of priority, the regional political deadlock, and second, the assured deadlock in Lebanon in the coming three years thanks to Lahoud's undemocratic extended mandate. Indeed, the Lebanese deadlock claimed its first victim on Friday, in the terrible attack against the former minister, Marwan Hamade, which could have easily killed him, and in which his guard died. Only Parliament's reversal of Lahoud's extension, through the election of an alternative figure before the constitutional end of the president's mandate on 24 November, can defuse the increasing tension inside Lebanon.

It is plain that the clauses in Resolution 1559 on the withdrawal of Syrian forces from Lebanon and the disarmament of Hizbullah will remain matters for international concern in the years to come. Until the Syrians pull their soldiers and intelligence agents out of Lebanon, and until Hizbullah is integrated into some sort of official Lebanese military structure, or simply disbanded, Resolution 1559 will remain unimplemented. Put more strongly, the Lebanese and Syrian governments will stand in violation of international law, and it was always naive to think that Annan's report would conclude anything else in light of the language adopted by the Security Council in the resolution.

However, from a Lebanese, indeed from an Arab, perspective, this was not the most salient point in a month of unusual diplomacy. What was outstanding was the acknowledgment, through a Security Council resolution, and now further underlined in the Annan report, that Lebanon, and in due course Syria and the rest of the Arab world, will stand afoul of international legitimacy if there is no recurrent change of executive power at the head of States.

In this context, one can appreciate the groundswell of opposition to the assured prolongation of the mandates of President Hosni Mubarak of Egypt and of President Zine el-Abidine ben Ali of Tunisia, as their terms formally come to an end this month after two decades in power. However harsh it will be to the ears of the eternal incumbents in the Middle East, these leaders' desire to stay in office indefinitely will only weaken their societies and perpetuate political deadlock in them, encouraging more foreign intervention – especially by Israel. This reality must be grasped as much by Emile Lahoud as by Syrian President Bashar Assad, who must recognise that their mandates can no longer be extended at will.

As seen from New York, the short paragraph in the Annan report on the need for societies to be provided with alternations of power holds the key to reversing the characteristic stalemate in Middle Eastern societies occasioned by the presence of absolutist leaders for life. If Kofi Annan wants to leave behind one thought for posterity, his statement on the matter may be the most powerful.

**X. 24 septembre – New York – Rencontre préparatoire société civile-G8:  
3 priorités, 7 thèmes <sup>(178)</sup>**

*Note* [by the *Daily Star* editor]. Below is a version of a statement by 40 leading Middle Eastern and North African civil society groups who met in Beirut on 5 September. The text, which may have been amended in its final version, was to have been presented yesterday, 24 September, to foreign ministers from the G8 and Arab countries meeting in New York. The proposals feed into the Forum for the Future that was set up at the G8 summit in Sea Island, Georgia, last June. It

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<sup>(178)</sup> *Daily Star*, 25 septembre 2004.

begins by proposing three 'imperatives' (freedom, democracy and justice), and seven 'programmes' (equality, rule of law, free expression and organisation, inquisitive education, economic inclusion, transparency, creative artistic and literary expressions).

### **Three Middle Eastern imperatives: freedom, democracy and justice Statement by 40 Mena civil society groups**

*Democratic and freedom imperatives:* We first take the opportunity to welcome and express our appreciation for showing your concern on how the G8 can support political, economic and social freedom in the Middle East. International initiatives for reform are important; the situation is grave in the Middle East, and most governments turn a deaf ear to internal calls for reforms. This meeting could be an important occasion for an open, committed partnership between democrats in our region and like-minded citizens in the international community, both as civil society leaders and as officials in willing democratic governments. While the participation of concerned governments in the region would be welcome, we cannot wait.

We are here, as individuals, simple members of the so-called Arab-Middle Eastern civil society, women and men who believe in the rule of law, an independent judiciary to protect it, an active and freely elected parliament to enact laws, an accountable, freely elected government to carry them through, meaningful human rights, including foremost the freedom of expression. We take pride in a profound and varied tradition that includes some of the most remarkable human achievements in law, theology, literature, arts and science.

We did not wait for this occasion to defend democracy and call for the respect of human rights. All three religions which emerged from our lands have always claimed justice and freedom as their clarion call, and our societies, like all societies on the planet, have time and again resisted 'the patterns of authoritarianism' – Abdelrahman al-Kawakibi, the author of the famous pamphlet with this title in the 19th century was poisoned for his frankness and courage. The fight against colonialism was carried out through immense sacrifices in the 'Liberal Age'. The Arab human development reports and various civil society declarations are the latest expression of a solid and consistent tradition of denouncing the effects of authoritarianism. While the belated rallying of some Western leaders to the central importance of democracy in our States is welcome, Middle Eastern democrats need a more solid commitment. Over a century ago, Kawakibi identified dictatorship as a crime against society.

Dictatorship must now be declared a crime against humanity.

The Kawakibi tradition never abated, but it now suffocates under the joint pressures of authoritarian governments and extremists within our societies. Both continue to remain unpunished for grave abuse of our freedoms, and extremism is coterminous with marginalisation and suppression of intellectual and political movements and leaders. As a handful of us request your attention and action, many more free men and women suffer for their courage by being silenced, more often than not by violent means. We request their immediate release and their right to rehabilitation and integration in a non-violent, meaningful political process.

Releasing prisoners of conscience, supporting their families and rehabilitating them once freed is the first declared commitment we need from this partnership, which must be supported by a multilateral organisation or a special G8 agency and an emergency fund. We can call it the 'freedom imperative'.

We do not claim to represent our societies: only a free vote will, and while most of our countries have parliaments, and occasionally courageous and outspoken members within them, their



power is curtailed by executive power, as indeed is the power of our judges which is constantly undermined by executive interference. What we can confidently claim to represent is a different, pressing voice that calls for ballot-based, non-violent change at all levels of our societies and States, starting from the top. This is the second overarching principled commitment we need from this partnership; we call it the 'democratic imperative'.

The democratic imperative requires, in some cases, constitutional terms for presidential office, in others the establishment of constitutional monarchies where the head of the executive is chosen directly by the people, and is accountable to them and/or to an elected parliament. In Lebanon, as we speak, democracy is endangered by the distortion of the constitutional terms for the sitting president. In Egypt, a large movement has formed under the motto 'no extension of the presidential mandate, no political inheritance, competitive presidential contest'. These come as a common response across the Middle East, whether they are declared republics or monarchies. In all, non-violent change at the top in freely contested elections that includes all those affected by the government is necessary. Here also, a special, wide-ranging agency programme is needed.

*Seven programmes for structural reform:* These two commitments are needed at once, and should be agreed without delay. Longer-term programmes are also necessary. An 'Arab and Middle East reform agenda' will raise the value of individuals as active and concerned citizens, and we repeat the statement released by 34 NGOs from 14 Arab States on the occasion of the latest Arab summit's acknowledgment of the need to reform.

On the basis of countless civil society meetings across our region, we propose a list of problem areas in which we all recognise profound deficits in need of profound reform. Each one of these is a long, complex programme, and in many cases, civil society has already started addressing it. From Sanaa to Damascus, Rabat, Alexandria, Beirut, Cairo and now New York, these issues have been largely identified:

1. A programme for citizenship equality and participation, especially gender equality, with special attention both to the victimisation of women as a group and the need to include victimised groups and/or 'minorities' in the national process.
2. A rule of law programme. The programme will enhance the independence and role of the judiciary, and monitor and remove laws that violate human rights and international standards. Emergency laws, special and military courts, undue police detentions and regular reliance on torture are now well identified. They must be abolished.
3. A programme that protects and enlarges freedom of expression, especially the freedom of the press and the freedom of organisation.
4. A programme for a thorough revision of education generally, and of religious education where intolerance is actively advocated in its name. Educators, religious and secular, must be encouraged to promote basic and high-quality skills and critical inquisitive thinking.
5. A programme to secure jobs for the 5 to 7 million annual entrants into the job market, especially the poor and those left behind. Civil society comprises by definition an active private sector, and forms of close cooperation are needed with the creators of wealth. Reform is bound to fail if the business sector is not an active part of it. This programme will promote investment in quality services and value-added products, small and micro-enterprises, competitiveness and quality, innovation, environmental sustainability and social services with creative partnerships between the State and the private sector.

6. A programme for combating corruption at all levels to ensure the accountability of bureaucracies and the transparency of organisations, both private and public, and financial institutions.
7. A programme for the promotion of creative arts and culture, and the qualitative enlargement of public space.

We need commitment with us in an open and dedicated manner. We shall be partners with the international community in these programmes and partners with our governments when they are willing. Partnership for reform should include a triangle of international and Arab governments, international and Arab private sectors and Arab civil society, but cannot be stopped by the resistance of those who defend the status quo. To prevent delay and resistance, implementation of these programmes must be carried out by vectors of civil society, persons and institutions, and not by international institutions or governments, whether governments in Arab States or foreign to the region.

We propose that each problem area gets carried out by a structured, international programme, with clear and realistic benchmarks, and the identification of individuals and groups to carry them out. The benchmarks must enclose further support in case of success, and penalties, starting with civil society partners who do not rise to the task, but including also in terms of penalties those individuals that stand against the accomplishment of the programmes. We need success stories to be known, and impediments to success to be denounced. Transparency and media coverage will be key. It may be helpful to envisage one or more Arab/Middle East Observatories to help measure benchmarks, objectives and achievements.

*Regional peace and the justice imperative:* This could be an appropriate place to stop. We can go home with this dual commitment: Two immediate imperatives, seven medium- to long-term programmes, and a structure to follow them up. This, in itself, is an achievement worthy of everyone's time.

But we do not feel this would be sufficient. For, if Arab societies confront problems that are universal, we are also plagued by a unique intensity of regional violence in which the first victims are our relatives and friends. In recent years, Middle Eastern violence has spilled over to the planet, which explains the present, unusual meeting. Middle Eastern violence carries complications of its own, mostly the one occasioned by the emergence of Israel on the ruins of Palestine. From Iraq to Darfur to Palestine, huge loss of human life is the defining concern of the unaccountable, unpunished exercise of power that creates massive and continued refugee crises. A priority is for the return of refugees to their homes – Palestinians, Sudanese, Afghanis, Iraqis and others, and for those leaders who are guilty of crimes against humanity to be brought to justice, as is the case of the former ruler of Iraq; Ariel Sharon, Moammar al-Gadhafi and possibly now the ruler of Sudan belong to this unique category. This we call the 'justice imperative'.

If this meeting is to be successful, accountability is, therefore, central.

We do not simply demand democracy within a self-governing Iraq, Western Sahara and Lebanon free of foreign troops, and a Palestine governed by its two constituent peoples. We need you to help us bring together human rights and political accountability, including at the top of decision-making in each State. All prisoners of conscience must be released, former presidents turned into retired citizens in a respectful neighbourhood, and leaders responsible for crimes against humanity put behind bars.

### **XI. 3 novembre – Beyrouth – A response from the field: Arab civil society after the G8 New York meeting**

*Note:* En novembre 2004, la fondation Heinrich Boell inaugure son bureau régional à Beyrouth avec un séminaire sur «Europe and the Middle East – Old structures, new challenges». Interpellés par l'énergie de la directrice du bureau, Kirsten Maas, nous choisissons de répondre par une intervention musclée à la présentation de la ministre d'État allemande aux affaires étrangères.

Having spent some time on HE Ms Kerstin Mueller's welcoming site, I tried to anticipate some of the elements she might share with us this morning.

I had an occasion to take a jibe against Foreign Minister Fischer last year, at a conference in which I introduced myself as lawyer for the Sabra and Shatila victims in the case against Sharon in Belgium, so let me continue in this contentious mood. I call it the Francis Brooke approach to diplomacy, and will explain what it means another time. While Ms Mueller's mere presence in Beirut is a meaningful testimony of the interests of the German Foreign Ministry for the region, she will remember little of this encounter if sheer diplomatic soft-spokenness rules our day.

But let me start on a soft, analytical approach.

#### **1. Analytical approach: three dilemmas**

The analytical/academic approach, as opposed to an advocacy side which we follow next, offers three dilemmas which we call respectively the Pervez Musharraf, DDS, and Syad Barre syndromes.

The first, the Pervez Musharraf syndrome, may be the most difficult dilemma in the years to come: you, the West, need your local strong man to reign in his society, and punish his enemies whom he portrays also as yours. He will do the job gladly, as long as you do not put into question his rule. A subset is 'the women's bone-throwing game'; it is becoming increasingly popular, witness the Lebanese cabinet and now the Emirates! It was devised by Tunisian strong man Zein al-Abidin – and before him in the 1980s a mediocre Lebanese president-turned small dictator, cultivating Westernised looks – donning a nice tie with a wife who does not wear a headscarf. Our Western friends feel immediately at ease: how often have we heard about Saddam Hussein's 'women's but': you know, Saddam Hussein is awful, but aren't Iraqi women so much better off under his rule?

Here is a second dilemma, the DDS, the dictator's deterrent strategy, which is the nuclear/WMD proliferation dilemma, or the Saddam- and now Qaddafi-syndrome. Rightly or wrongly, probably rightly, the West is concerned about WMD in the hands of inimical leaders. So if you are a dictator, like Saddam or Qaddafi, you build up, or look like you are building up your WMD arsenal. At one point, the West will have to make the following choice: If you blink and disarm, they embrace you. If you do not blink and refuse to disarm, they go to war against you. The problem is that if they go to war against you, then you risk them using WMDs against you – or against their own antagonistic population, which is the same in terms of horror. This we call the dictatorship deterrence strategy (DDS): the game then becomes subtle, and reaches the following solution from the dictator's perspective: I will play along and get rid of my WMD arsenal, but you leave me in power whatever my domestic record.

It works; see the crowds of visitors at Mr Qaddafi's steps. Such a syndrome is a subset of the Soviet-era policy of deterrence, which continues for China and its North Korean satellite. The

difference with the Soviet era is twofold in the Middle Eastern arc of crisis: many of the satrapies are West-friendly, strategically as in the case of Israel, tactically as when Saddam used his gas in Halabja and against the Iranians. Mostly, however, there has been an increase in all those unfriendly little satrapies, like Libya's governors, who build up their WMD arsenal as a bargaining chip for DDS and are ready to turn friendly, so long as their power and that of their progeny stops being called into question.

A third dilemma is the Syad Barre syndrome. The Somali situation today is the result of a cruel ruler called Syad Barre hanging on to power in Somalia as society unravelled into civil war over a period of two decades prior to his collapse, the civil war being almost inevitable when the ruler remains so long in power. When he finally goes, Armageddon follows in the shape of chaos, so disjointed and weak has society become: this is a common phenomenon in Africa and the Middle East.

I have called these 'dilemmas', because there is no evident recipe to address them, except for careful watchfulness, first within these societies, and then beyond. When domestic rule turns so brutal as to allow for these syndromes to take root, it is usually too late. They become 'conundrums'.

## 2. Advocacy: testing the three imperatives

One is on more solid ground as an advocate of human rights. Three points, which all emerge from readings in and around German diplomacy in recent months, are made here against the three imperatives advocated by civil society at the G8 meeting last September: the democratic, justice and freedom imperatives.

*The democratic imperative:* one can only be impressed by the great strides of international law in the shape of UNSC Resolution 1559, in its paragraph requiring that the democratic process ensuring the change in a country's presidency must not get tempered with. The reality is that 1559 has, for the moment, joined many other resolutions in and around the Middle East, which remain without application in the foreseeable future. Should one need a refresher on how Europe stands on alternation in power, here is a telling quote: 'The European Union... congratulates Mr Ben Ali on his new term as President', the EU Council statement said on 26 October. While it mentions in passing some flaws – does no one blush in Europe's chanceries before 94 % in a presidential contest? – it reaffirms that 'The European Union looks forward to deepening its partnership with Tunisia under the leadership of President Ben Ali'. So long as our European and Western colleagues do not recognise that the lack of democratic change at the top is the central Middle Eastern problem, we are not out of the woods. This is particularly painful in the case of Germany, which has little to fear in terms of colonial past in the region, and where Chancellor Schröder turned his back on the one powerful message he had offered as a way out of the war in Iraq: that Saddam Hussein should go.

*The justice imperative:* I will not mention Ariel Sharon, especially to a German State minister, may I leave it to Usama bin Laden to remind the Western leaders that the architect of Beirut 1982 remains unpunished; indeed that he is feted across Western capitals? Nor shall I mention Darfur, the Minister in is on record for talking courageous. May I just invite her, however, to read the statement of a group of Arab democrats last July in Cairo (*Daily Star* and *Nahar*, 24 July 2004). There, we tried to insist that there is no solution if those in power, who are largely responsible for perpetuating a civil war going on for a quarter of a century, and now Darfur, remain beyond the pale of political accountability; and since the international community has failed their people politically, there is no solution that does not incorporate judicial accountability.

Not that one expects much on that judicial score from European diplomacy, except for nameless Janjawids. To wit, here is Libya's Mu'ammar al-Qaddafi: You are all familiar with his trail record, recently UTA, Lockerbie, before that the terrible intervention in Chad, then the horrors of West Africa. Not to mention his Arab or Libyan victims. Now here is a photo, taken from the visit of Chancellor Schroeder two weeks ago to Libya:

Trekking to Tripoli in October 2004, oil flowing, the Chancellor beaming, better than 1 000 words...

One can carry on, on both the democracy and justice imperative, but let me just mention that our societies are far ahead of the West – just in case one listens to that shallow argument about change from within: as if those people who languish in jail, or are the target of assassination, like Minister Marwan Hamadeh, or spend their lives in exile like our late Raymond Eddé or Munsef Marzuki, are people from without. This remarkable, consistent show of courage leads me to the third imperative.

*The freedom imperative:* 'As a handful of us request your attention and action, many more free men and women suffer for their courage by being silenced, more often than not by violent means. We request their immediate release and their right to rehabilitation and integration in a non-violent, meaningful political process. Releasing prisoners of conscience, supporting their families and rehabilitating them once freed is the first declared commitment we need from [any international] partnership, which must be supported by a multilateral organisation or a special G8 agency and an emergency fund.' (NY statement, *Daily Star*, 25 September 2004.) Lists of prisoners of opinion are available, let us put their fate, the fate of their families as they languish in jail and their future as successful leaders of freedom, on the international agenda. They aren't.

### **3. Querschnittspolitik**

So I am leaving you with three imperatives and three dilemmas. Some combinatory should be possible, based on a projection of human rights which Ms Mueller calls *Querschnittspolitik* as well as *Leitlinie* (*Querschnittspolitik*, cross-section, transversal, *Leitlinie*, guiding course, Mueller, speech Bundestag, 13 March 2003). As *Leitlinie*, let me try to make things easier by offering the 'freedom imperative' as absolute priority. Prisoners of conscience are a special category of agents of political change without violence, whom we need to be out on the street, advocating non-violent, democratic alternation at the top, against callous regimes and extremists of all religious persuasions. These people are the civilised future of the region. The freedom imperative is not difficult to act upon, as joint policy with Arab/Middle East democrats; it can and should start immediately, with the release of these people at the top of our common agenda.

## **XII. 15 novembre 2004 – Rome – Responsabilités**

*Note:* Dans le cadre de l'action Jean Monnet, le professeur Maria Grazia Melchionni, collègue Jean Monnet à La Sapienza de Rome, organise une conférence sur «Le relazioni trans-mediterranee nel tempo presente: dialogo interculturale, integrazione, modernizzazione, conflitti». Le texte qui suit présente des extraits de notre intervention.

[...] Responsabilité/accountability

La responsabilité a pour le politique des résonances diverses. Pour le juriste, ses acceptions sont plus précises. Au cœur du droit – que d'ouvrages sur la responsabilité civile... –, la responsabilité publique est d'abord responsabilité politique, qui s'exerce dans les fonctions

constitutionnelles et historiques d'un pays donné. Mais il est aussi des gradations de la responsabilité, que nous retrouverons d'abord en amont dans la responsabilité des criminels contre l'humanité, puis en aval dans la tâche qui incombe aux gouvernements de veiller à ce qu'un crime ne reste impuni dans sa sphère interne de responsabilité.

*En amont de la responsabilité: les grands crimes*

En amont de cette responsabilité politique se profile déjà une responsabilité à l'allure exceptionnelle, qui fait partie d'un corps hésitant mais expansif. Dans l'ordre international des choses, elle revêt de plus en plus des formes innovantes, celles qu'un Milošević, qu'un Saddam Hussein ont rencontrées à leur corps défendant, celles qu'un Ariel Sharon, qu'un Pinochet ont confrontées en n'y laissant, hélas!, que des plumes, celles promises à Omar Bashir, Kadhafi et autres suspects avérés, coupables de «crimes contre l'humanité». La responsabilité est l'envers de l'impunité, expression juridique de l'ensemble encore flou de ce domaine nouveau et puissant qu'est le droit pénal international. Je noterai au passage qu'il n'est pas un hasard que l'ensemble de la région, à l'exception étonnante de la Jordanie, sans doute liée à la qualité exceptionnelle de certains de ses juristes, ait refusé de se joindre au Tribunal pénal international établi à Rome en 1998. La responsabilité au sens fort des grands tribunaux issus de Nuremberg, celle des grands crimes que le monde ne parvient plus à ignorer, il est normal que les gouvernements arabes, qui s'évertuent depuis des décennies maintenant à empêcher toute responsabilité politique au sens classique du terme, se refusent à la reconnaître. La responsabilité criminelle internationale se trouve donc, sans doute pour la première fois dans l'histoire, sur l'agenda de l'humanité. Elle est récente, mais elle est en amont parce qu'alternative, complémentaire disent les juristes. C'est seulement lorsque la responsabilité politique ne fonctionne pas que la responsabilité criminelle du droit international peut jouer. Ce potentiel est réel, mais il est fragile, incomplet et balbutiant. Il faut y prêter attention, sans perdre de vue sa complémentarité à la responsabilité centrale de notre vie, et de notre propos, la responsabilité politique.

*Au cœur de la responsabilité: l'alternance politique dans la Constitution*

Cette responsabilité politique, nous avons pour mieux la comprendre deux détours linguistiques. Dans sa forme anglo-saxonne, elle est *accountability*. Les dirigeants politiques sont avant tout *accountable*: ils rendent des comptes. Dans sa forme arabe, elle est manifeste dans un principe du Coran, *inna al-'ahda kana mas'ulan* (Coran, *isra'*, 34:17). Dans ces deux acceptions, la responsabilité politique est particulièrement déficiente dans la région. Les dirigeants ne rendent pas de comptes: prenons le cas le plus flagrant, celui de l'Iraq. Après trois décennies de misères, de violations sans précédent dans le domaine international – deux guerres meurtrières totalement infondées, contre l'Iran, puis contre le Koweït – et surtout dans le domaine interne, il a fallu l'invasion de 200 000 soldats étrangers pour que Saddam Hussein commence à rendre des comptes... Et si les autres dirigeants de la région n'ont pas un passé aussi lourd, aucun ne rend de comptes, car il – le dirigeant est toujours mâle – ne considère qu'il n'a de comptes à rendre à personne, et surtout pas à ses citoyens. À défaut de cette responsabilité politique, qui ne peut s'exercer que dans le vote, seule la violence la plus tragique ou la maladie permettent qu'un chef d'État rende parfois des comptes...

D'aucuns s'insurgeront contre cette condamnation sans équivoque: nous avons, après tout, des élections et des référendums, et le «peuple» est vocable omniprésent dans la bouche des dirigeants.

Or personne n'est devenu plus apte à vider les mots de leur sens que nos dirigeants; ils se sont même érigés en maîtres absolus du langage. La délicieuse anecdote d'*Alice au pays des merveilles* est bien connue.

Humpty Dumpty, to Alice:

'And only one for birthday presents, you know. There's glory for you!'

'I don't know what you mean by "glory";' Alice said.

Humpty Dumpty smiled contemptuously. 'Of course you don't – till I tell you. I meant "there's a nice knock-down argument for you!"'

'But "glory" doesn't mean "a nice knock-down argument";' Alice objected.

'When I use a word', Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean – neither more nor less.'

'The question is,' said Alice, 'whether you can make words mean so many different things.'

'The question is,' said Humpty Dumpty, 'which is to be master, that's all.'

(Lewis Carroll, *Through the Looking Glass*, in Martin Gardner, ed., *The Annotated Alice*, Penguin ed. 1970, pp. 268–269).

Il faut, hommage au grand philosophe français disparu le mois passé, *déconstruire* ce langage du maître. En un sens, la déconstruction a déjà été faite, par les gens du pouvoir eux-mêmes, dans le sens négatif promu par Humpty Dumpty: je déconstruis pour rester maître, et l'obstacle principal à cette déconstruction est en général la Constitution. En Tunisie donc, parce que la Constitution avait établi que le président ne pouvait briguer plus de deux mandats successifs, on a amendé la Constitution pour que l'on ne s'en préoccupe plus, tout en jetant de la poudre aux yeux sur des scénarios de compétition, alors que toute organisation en dehors de l'État de police juridifié est traquée, malmenée, ses dirigeants jetés en prison ou forcés à l'exil (article 39, amendé en 2002). «On» n'est pas une abstraction: quand ce n'est pas un parti unique, c'est un homme. En Syrie, les dispositions constitutionnelles demandaient que, lors du décès du président, son vice-président prît le pouvoir jusqu'à l'organisation des élections de son successeur par le pouvoir législatif. Du vice-président en titre, on n'a plus osé dire le nom et, comme la Constitution requérait que le candidat ait au moins 40 ans, «on» l'a amendée pour la ramener à 34 ans (article 83, amendé en 2000). Au Liban, la loi exceptionnelle, votée pour une fois, pour forcer un candidat particulier au poste, et lui seul, a trouvé son chemin comme amendement constitutionnel trois fois en moins de dix ans (article 49, amendé en 1995, 1998 et 2004). En Iran, on a trouvé le moyen d'investir la responsabilité suprême dans le guide de la révolution, forcément un homme de religion, qui est élu par une assemblée spéciale de ses pairs (article 108). Quant au président, le système a réussi à créer un filtre puissant qui a fonctionné sans faillir depuis 1979: à chaque élection présidentielle, un groupe de dix personnes, non élues, décide si le candidat est «adéquat» pour le poste. Des centaines de candidats sont ainsi filtrés: et lorsqu'un candidat réformiste a réussi à passer à travers le filet constitutionnel, toute la structure des ulémas, dont il fait partie, est là pour garantir que le système survive à toute velléité ou tentative de démocratie.

Tout cela dans des régimes qui s'autoproclament républicains. Dans les Constitutions monarchiques, lorsqu'elles existent, le problème de la responsabilité politique ne se pose pas. Comme au Moyen Âge, le roi ou l'émir n'est jamais responsable devant quiconque; il choisit des ministres parfois sujets, dans le texte, à quelque responsabilité parlementaire. Pas une instance de mise en péril du ministère n'a été enregistrée de mémoire d'indépendance dans les pays arabes, dans les systèmes républicains ou monarchiques.

La déformation de la responsabilité dans les systèmes qui se considèrent républicains, son absence dans les systèmes monarchiques forcent l'irresponsabilité sur l'ensemble de la société: être responsable, en société, est la condition du citoyen. L'ensemble des lois civiles, pénales, fiscales... sont là pour établir cette responsabilité. C'est pour cela que la réforme engagée aux échelons moindres de la société ne peut aboutir. La pyramide constitutionnelle de Kelsen, de l'État de droit de Kelsen, n'est pas seulement opérationnelle au niveau où il l'a décrite, au sommet. Quand elle manque au sommet, il est difficile qu'elle ne s'effondre dans l'ensemble de

la société. Bien sûr, il faut tenter de lutter contre la corruption à tous les niveaux, mais comment responsabiliser le préposé aux documents officiels qui arrondit son maigre mois par une surcharge aux photocopies? Cette surcharge est illégale, elle est corrompue, mais nul ne nous convaincra que c'est là où la réforme doit commencer. Et ainsi de suite, de la base au sommet: tant que le chef, théoriquement garant du système politique et constitutionnel, échappe à la responsabilité politique, à celle du vote populaire libre, compétitif, il sera difficile de s'attacher aux peccadilles de la corruption en deçà.

C'est là aussi que l'utilisation de plus en plus déformée de la justice est gravement limitée dans l'image hiérarchique de Kelsen. Souvent, comme on le voit dans nos gouvernements, la responsabilité pénale resurgit par revanche, lorsqu'on bascule un rival politique dans telle ou telle accusation criminelle. Or toute «réforme» basée sur la responsabilité ne peut ignorer cette hiérarchie des mœurs sous peine de vider la responsabilité de son sens. Encore une fois, le langage de la responsabilité devient un contresens, qui en vide la notion même. Et le prix est d'autant plus cher en société que les honnêtes gens ne se lassent que difficilement des promesses de responsabilité, d'État de droit ou de lutte contre la corruption.

Il faut aller à contre-courant, déconstruire en étant honnête, en donnant aux mots leur sens vrai. Non, on ne fera pas de lutte contre la corruption en arrêtant le petit fonctionnaire ou en jetant un ancien ministre aux mains de la justice pénale. On n'engagera cette bataille qu'avec des mains propres, et les responsables au sommet ne l'assument jamais, parce que le critère essentiel de leur responsabilité, qui est un critère politique, n'est pas respecté. Or c'est un truisme que la responsabilité politique est conditionnée par l'alternance au pouvoir, c'est-à-dire la possibilité réelle, non touchée par des lois électorales consacrées à l'empêchement de l'alternance, et encore moins lorsque la responsabilité au sommet manipule la Constitution en la vidant de tout sens démocratique.

Reste que, dans cette gradation de la responsabilité, on ne peut passer outre, en aval de la responsabilité politique, comme en son amont, par la responsabilité internationale grandissante pour crimes contre l'humanité, le phénomène de l'impunité dans le champ interne du politique. Car si le champ international de la responsabilité est encore chancelant pour empêcher l'impunité par-delà les frontières et si les formes politiques de la responsabilité — celles que le peuple est censé exercer par un vote régulier et libre — sont systématiquement vidées de sens, on assiste, en aval de cette responsabilité politique, à des formes d'impunité dans le champ interne. Là, il ne s'agit plus de responsabiliser les gouvernants pour crimes contre l'humanité ou de responsabiliser politiquement en exigeant l'alternance. Il s'agit de comprendre l'importance du phénomène d'impunité dans ce que l'on ne peut qu'appeler, pour sa gravité à l'échelle tant interne qu'internationale, l'«affaire Marwan Hamadeh».

## Conclusion

Pour s'être opposé, ainsi qu'une large frange de la population libanaise, au diktat syrien pour reconduire la présidence libanaise avec la personne dont le mandat venait à échéance selon les termes de la Constitution, l'ancien ministre et député fortément populaire Marwan Hamadeh a été, le 1<sup>er</sup> octobre 2004, l'objet d'une voiture piégée à Beyrouth.

Nous concluons avec cette affaire qui fait se rejoindre, comme seule la réalité sait le faire contre les rêves d'Hamlet, les trois impératifs. Voici un homme qui prend position pour l'impératif démocratique et demande que les termes de la Constitution sur la fin du mandat présidentiel soient respectés. Une voiture piégée le blesse grièvement ainsi que son compagnon et tue son chauffeur. Les tueurs disparaissent, et nul effort ne semble émaner des autorités pour les retrouver, au moment même où ces autorités sont suspectes d'avoir commandité l'attentat.



Voici encore l'impératif de justice, avec la mise en danger de l'impératif de liberté en conséquence. Ici, il ne s'agit plus de voix dissidentes menacées ou risquant la prison, il s'agit simplement de les faire taire par un assassinat.

La situation est grave de notre côté de la Méditerranée, et nous sommes tous embarqués sur la même galère.

### **XIII. 9 décembre – Rabat – Première rencontre société civile-G8 – Rappel: Three proposals for the Rabat meeting <sup>(179)</sup>**

*Note:* Rebelote à Rabat pour le G8. On ne voit pas très bien ce qui différencie la rencontre de New York de celle de Rabat, mais pour tenter de forcer une réponse tangible du G8, plusieurs membres du Forum démocratique arabe publient le texte qui suit. Les signataires sont ainsi présentés dans le *Daily Star*: «Isam Khafaji is an Amsterdam- and Baghdad-based defender of democracy and human rights, and longtime opposition leader of the former Iraqi regime. Abdelaziz Khamis is a leading Saudi liberal dissident, who lives in exile in London. Chibli Mallat is a human rights lawyer and law professor in Beirut. Nehad Nahhas spent several years in a Syrian jail, and is a leading human rights defender in Damascus. Muhammad Rumaihi is editor of *Al-Hiwar al-Arabi* in Kuwait.» Le texte arabe est publié également deux jours plus tard dans le *Nahar* avec la signature additionnelle de Kamel Labidi, Tunisien, militant de longue date pour les droits de l'homme.

In the original paper presented by Arab civil society groups to the G8 meeting in New York earlier this year, three imperatives were identified which required some response from G8 ministers and any Arab or Middle Eastern government that was ready for meaningful reform. Neither acknowledgment of these imperatives by the concerned governments, let alone support, was forthcoming.

As officials gather in Rabat, Morocco, for a meeting of the Forum of the Future, the framework established at the G8 summit at Sea Island, Georgia, for an ongoing dialogue between G8 members and regional governments on such issues as reform, one should, again, expect much resistance. However, the imperatives defined by the civil society groups will persist as priority demands in the Middle East, which is why they are worth repeating.

#### **What are these three imperatives?**

First, the freedom imperative. This focuses on the release of prisoners of opinion or conscience (PoC), the support for their families during their incarceration, and their rehabilitation and support as leaders of opinion if they so wish after they are released. The efforts of some civil society groups have led to the establishment of an initial list of such prisoners of opinion, as well as a principled manifesto for their release, together with calls for the protection of freedom of expression, especially freedom of the press and freedom of association, especially of political parties.

Since the New York meeting, few prisoners have been released and more have been put in jail or physically threatened (in Bahrain, Lebanon, Israel and Saudi Arabia). News reports from Syria this week suggested there had been a release of PoC, even though the full impact of this has yet to be gauged, while pressure continues to build up from former PoC, and from relatives of PoC who remain in prison.

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<sup>(179)</sup> *Daily Star*, 9 décembre 2004, *Nahar*, 11 décembre 2004.

As a result of this, we propose that the participants in the Rabat meeting adopt the freedom imperative and establish a G8 agency and fund dedicated to PoC.

Second, the democratic imperative. Unless there is a peaceful, non-violent change in Middle East governments, a decisive element of reform will be missing. Instead, since the New York paper, both in Lebanon and Tunisia presidents have seen their terms extended through clearly undemocratic, unconstitutional means. At the same time, both in United Nations Security Council Resolution 1559, which among other things demands a Syrian pullout from Lebanon, and in the subsequent report of the UN Secretary-General, the need for presidential change was consecrated, for the first time, as an international request couched in Security Council language.

The G8 and willing governments in the Middle East should adopt this symbolic change as a precedent, and work with civil society to make it a rule rather than an exception in the region.

As action, we propose that the creation of an observatory on presidential alternation (it could be called an elections observatory) be announced in Rabat, as well as a concomitant Arab-international task force for free and fair elections. Middle East civil society members can provide much of the manpower for this task force, and deploy it in Iraq and Palestine as early as January 2005.

Third, the justice imperative. This requires the establishment of mechanisms that bring to justice those Arab or Middle Eastern leaders who are responsible for egregious violations of human rights, notably crimes against humanity – namely Saddam Hussein, Moammar al-Gadhafi, Ariel Sharon and the rulers of Sudan. Each case has its own specificities, but in all four cases, the G8 is lagging far behind the demands of Arab and Middle Eastern civil society.

In this context, we should consider the following. The trial of Saddam Hussein is afoot, and we should envisage together how more serious regional and international input can lessen the imprimatur of victor's justice in that historic trial.

In the case of Moammar al-Gadhafi (who was indicted in August 2004 by the Lebanese prosecutor-general for his involvement in the disappearance of the Lebanese Shiite leader Imam Musa Sadr), the normalisation under way with Western leaders openly contradicts the justice imperative by endorsing a return to the medieval practice in the West of accepting blood money, which the Libyan regime paid out to compensate the victims of airliners that it was responsible for downing.

In the case of Ariel Sharon, the American government openly undermined his indictment and trial in Belgium last year, a tragic development for the justice imperative. Putting Sharon's established crimes against humanity on the international agenda remains central for peace in the Middle East.

In Sudan, Arab democratic civil society leaders demanded in July 2004 judicial accountability for those responsible for the flight of over one million people from the Darfur region, and the consequent death of what is estimated to be nearly 100 000 innocent Sudanese. Both Amnesty International and Human Rights Watch support this demand.

In terms of action, the civil society groups propose that participants in the Rabat gathering acknowledge the need for the justice imperative, even as more practical measures should accompany all four prima facie cases.



## W O R K S H O P 6

Youth and the religious factor,  
tolerance and laicism

(The dialogue in the international context)

## A T E L I E R 6

La jeunesse face au fait religieux,  
à la tolérance et à la laïcité

(Alternatives à la crise des idéologies)

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Dans quelle mesure, et en quoi, les attitudes de la jeunesse d'aujourd'hui face au fait religieux, à la tolérance ou à la laïcité diffèrent de celles des générations précédentes? Est-ce que nos jeunes sont aussi religieux, autrement tolérants ou plus laïques que leurs aînés? De pareilles questions trouvent des réponses assez différentes d'un pays à l'autre, selon l'importance que les religions mêmes assument et conservent dans chaque communauté particulière, en Europe ou sur le pourtour de la Méditerranée.

Les termes de «tolérance» et de «laïcité» n'ont pas dans nos langues les mêmes connotations. Le sens que donnent à l'idée de la tolérance un John Locke ou un Voltaire ou bien la manière dont la conçoit un poète catholique comme Paul Claudel – en reléguant la tolérance «à la maison de tolérance» – sont, de toute évidence, différents, parfois opposés l'un à l'autre, voire contradictoires. Quant à la laïcité, la confusion est encore plus fréquente. Le mot vient, comme on sait, du grec (*laos* – peuple) et passe par le latin médiéval (*laicus*), pour désigner d'abord celui qui ne faisait pas partie d'un ordre ecclésiastique, tout en restant en quelque manière rattaché à l'Église (*frère laïc*). Le siècle des lumières reprend le terme et en modifie la signification. Voltaire parle des «missionnaires laïques» et se range parmi eux. Le mot n'est pourtant pas fréquent dans les discours de la Révolution française qui conserve à sa façon le culte de l'«être suprême» avec son panthéon, son martyrologe et ses rituels. On ne le trouve pas non plus dans la *déclaration des droits de l'homme et du citoyen*. L'esprit laïque triomphera dans la fameuse loi 1905, préparée par la politique de Jules Ferry, accentuée par les prises de position contre le cléricalisme, marquée finalement par l'issue dramatique de l'affaire Dreyfus.

Cette loi, proclamant hautement «la séparation des églises et de l'État», fut précédée par une série de mesures séculières: autorisation de divorce (1884), ouverture des cimetières aux citoyens de toutes les confessions (1881), suppression du repos dominical obligatoire (1879), extension et gratuité de la scolarisation (1881), interdiction de l'enseignement religieux dans les établissements primaires de l'État (1880). Une partie importante de l'intelligentsia – «ce grand diocèse des esprits émancipés», selon la formule de Sainte-Beuve – accueillit avec enthousiasme ces innovations dans la vie sociale et culturelle. Les emblèmes religieux dans les écoles publiques (crucifix pour tous, effigies de la Vierge pour les filles) furent enlevés dans plus d'un département bien avant 1905. «L'école ne doit être ni une chapelle, ni une tribune, ni un théâtre», déclarait Jules Ferry. Léon Gambetta voyait l'enseignement comme un «séminaire de l'avenir». Aristide Briand donnait à ces idées un cadre réel et pratique. La Constitution de 1946 définira dans son premier article la France comme une république «laïque».

Cette «exception française» avant la lettre provoquait à l'étranger des réactions, parfois violentes, notamment dans les pays catholiques. La Belgique l'a acceptée plus vite et suivie de plus près que la plupart des autres, non sans polémiques avec son épiscopat. Dans des pays protestants, où le catéchisme est autrement présent au sein de la vie quotidienne, les tensions de ce genre ne prirent généralement pas trop d'ampleur. Aux États-Unis, «on ne s'imaginait même pas que la lecture de la Bible fût un acte confessionnel», comme l'attestent des témoins. Les références à Dieu ou à la Trinité se sont conservées jusqu'à nos jours dans les Constitutions du Royaume-Uni ou de l'Allemagne, plus particulièrement de la Grèce ou de l'Irlande. Il serait intéressant de faire un travail comparatif sur ces différences et ces dissensions. Il s'agit d'établir un nouveau dialogue entre histoire et mémoire.

Je rappelle ces faits, pour la plupart connus, tentant de décrire le bagage que nous portons dans nos balluchons sur les radeaux qui naviguent d'un rivage à l'autre, ou de montrer cette sorte de

panoplie avec laquelle nous entrons parfois en lice. On constate souvent, avec plus ou moins de réserve ou de reproche, qu'une laïcité «identifiée à l'expérience historique française et difficilement traduisible renvoie, dans les perceptions qu'en ont les autres pays d'Europe, à une neutralité plutôt négative à l'égard des religions». Il est peut-être utile de distinguer au préalable une laïcité de la notion de «culte» de celle de «culture». Cette dernière s'identifie dans bien des cas à la sécularisation. Dans l'usage courant se rencontrent et se confrontent les attitudes des croyants et de ceux qui refusent de croire. Quoi qu'il en soit, il serait erroné de réduire la démarche laïque au seul agnosticisme ou à l'athéisme.

Il y a dix ans, venant m'installer en Italie, je fus surpris de lire le sous-titre d'une revue assez connue, *«Rivista per il dialogo fra credenti e laici»*. Doit-on opposer de la sorte les croyants et les laïques? Ne pourrait-on admettre également une laïcité de la foi ou bien une foi des laïques? Cela semble aujourd'hui moins difficile que dans le passé. Penseur spirituel de grande envergure, excommunié par l'Église orthodoxe russe avant la Révolution et exilé de l'Union soviétique après, Nikolaï Berdiaev proposait aussi de distinguer la religion comme un phénomène collectif de la foi en tant qu'acte personnalisé, sans nier pour autant ni l'une ni l'autre. L'expérience du personalisme chrétien et sa manière d'accorder croyance et laïcité méritent d'être évoquées en l'occurrence.

Le débat actuel sur ce sujet nous confronte avec différents problèmes d'ordre moral, idéologique, éthique ou psychologique, avec ceux d'éducation, d'enseignement, de profession de foi au sens plus large du terme. Une revendication particulière de la laïcité s'inscrit dans les droits de l'homme ou relève de la liberté d'expression. Elle favorise la rencontre des différentes religions ou sert d'intermédiaire entre elles, se démarquant d'une «laïcité de combat», vue par d'aucuns comme trop «intégréte». Certains d'entre nous appellent de leurs vœux «une laïcisation de la laïcité». Malheureusement, dans les pays où un nationalisme enraciné s'associe au cléricalisme, la démarche laïque se voit condamnée à la marginalisation ou à l'ostracisme. (Nous avons eu l'occasion d'observer les rapports entre les chrétiens orthodoxes et catholiques au sein d'un espace où ces contradictions sont accentuées par le schisme chrétien, presque millénaire – dans les Balkans –, et où les églises ont fourni dans différentes situations leur soutien aux nationalistes qui frappaient plus particulièrement les citoyens de confession islamique.) Le vocabulaire du stalinisme, pratiquant une impitoyable propagande antireligieuse, refusait à son tour toute notion de *laïcité*, vue comme l'un des «résidus bourgeois».

Autour des questions de laïcité se regroupent celles, nombreuses, qui dépassent le cadre socio-religieux et appartiennent également à d'autres ordres d'idées: les relations de l'individu et de l'État, les clivages entre les sphères publique et privée, la liberté de conscience, le rejet du communautarisme, le respect de l'égalité des droits et des devoirs des citoyens, la lutte contre les discriminations (aussi bien religieuse ou confessionnelle que raciale, ethnique, nationale, sexuelle ou autre), certains types d'oppositions entre la gauche et la droite, la quête d'un espace universel ou commun, l'affirmation de la citoyenneté, la promotion d'un idéal de tolérance et de fraternité, une nouvelle pédagogie et, somme toute, une défense et illustration d'une éducation moderne. Reste à constater dans quelle mesure le dogme libéral, tel qu'il est pratiqué dans certains pays économiquement avancés, pourrait être compatible avec les valeurs d'un système éducatif réellement laïque.

La laïcité est à même d'aider à sa manière les religions en les guérissant de leur particularisme ou de leur prosélytisme excessifs. L'Église catholique, après l'*aggiornamento* du Vatican II qui a rejeté, entre autres, l'idée antisémite du «peuple déicide» et a aidé à lever l'anathème frappant les «schismatiques» d'Orient, permet de réviser plus d'une prise de position du passé. Jean Paul II a récemment surpris bien des fidèles acceptant dans un de ses discours *urbi et orbi* une «laïcité juste» (*una giusta laicità*) opposée à l'intransigeance du «laïcisme». Le jeu avec les termes n'ar-

range pas toujours la clarté du débat. Quoi qu'il en soit, une certaine laïcité prend aujourd'hui à son compte l'engagement pour l'avortement ou la contraception, interdits ou déconseillés encore par l'Église, comme c'était le cas naguère du divorce ou de la sécularisation des cimetières. C'est dans le même contexte que s'inscrit le refus d'insérer dans la Constitution européenne la mention de la composante chrétienne (ou judéo-chrétienne), présumant que cette matière, quoique ineffaçable dans l'histoire, ne devrait pas faire partie d'une clause constitutionnelle.

Certaines polémiques que l'on croyait jetées dans les oubliettes de l'histoire réapparaissent de temps à autre et reprennent parfois des dimensions inattendues. C'est notamment la place de l'enseignement de la religion dans les établissements publics ou bien le port des signes religieux dans les écoles. Ces questions ont déjà une longue histoire en Europe et se posent différemment d'un pays à l'autre. La laïcité de type français cherche à les résoudre en recourant à une législation spéciale ou en appliquant des instructions ministérielles. Dans d'autres pays, on évoque habituellement des traditions plus anciennes ou les usages moins astreignants. Cela crée parfois des querelles enflammées qui n'ont la plupart du temps que des effets provisoires ou palliatifs. Les exemples en sont nombreux; certains d'entre eux méritent malgré tout d'être cités. L'Allemagne a vu en 1995 une «querelle de crucifix» à l'échelle nationale lorsque le tribunal de Karlsruhe déclara inconstitutionnel un règlement du Land de Bavière obligeant les écoles publiques à accrocher un crucifix dans chaque salle de classe, ce qui causa, entre autres, un blâme venant du Vatican. L'Italie vient d'être à son tour secouée par la décision d'un tribunal de la petite ville de Chieti condamnant la pose du crucifix dans une des écoles — le tribunal d'instance supérieure a annulé tout de suite une pareille décision. Il semblerait que les lois de 1924 et de 1928, qui réclamaient en même temps la mise du crucifix et du portrait du roi dans les classes, n'auraient jamais été abrogées, malgré la chute tumultueuse de la monarchie italienne après la Seconde Guerre mondiale. Cela montre le peu de suite d'esprit en la matière. Le dernier changement du gouvernement en Espagne, qui a porté au pouvoir le parti social-démocrate, annonce avec empressement sa décision de supprimer l'obligation de l'enseignement religieux dans les écoles d'État. Et la Terre continue de tourner.

La présence de l'islam, devenu la deuxième religion de l'Europe, fait resurgir bien d'autres questions où la laïcité proprement dite n'est pas le seul enjeu. Je me limiterai à évoquer quelques analogies dans l'histoire des religions chrétienne et musulmane susceptibles d'éclairer probablement certains phénomènes couverts d'ombre. L'Europe n'a pas réussi à christianiser sa modernité, les Lumières s'y sont opposées. Elle a pourtant modernisé considérablement le christianisme. «Moderniser l'islam ou islamiser la modernité», cette alternative fut présentée pour la première fois par un penseur musulman en exil, qui n'aime pas que l'on cite son nom. Là aussi, de même que dans l'Europe d'hier, la modernité reste rétive ou réservée face à certaines manifestations de la religion. «On ne touche pas au Livre», c'est la réponse que donnent certains croyants en l'occurrence. On pourrait rappeler que rien n'a été changé dans la Sainte Écriture en éliminant l'Inquisition, le bûcher, la torture infligée aux hérétiques et certaines autres perversions de nos églises. L'histoire moderne — dans laquelle le colonialisme pèse de tout son poids — n'a pas permis à la plupart des pays islamiques de vivre leur siècle des lumières. La *Nahda* ou le *Tanzimat* ainsi que certaines autres tentatives de réforme n'ont pas eu la chance ou la possibilité d'aboutir. Peut-on donc moderniser la lecture du Coran sans en trahir la lettre? Y a-t-il une nouvelle lecture possible des paroles de l'Envoyé? C'est au seul monde musulman, à son intelligentsia éclairée, de chercher la réponse à ces questions. Ils ont de bonnes raisons de se méfier de nous autres. Nous pourrions peut-être les aider en cherchant à éviter certains de nos propres jugements, erronés ou tendancieux: l'islam et l'islamisme ne sont pas la même chose; l'islamisme et l'intégrisme islamique sont des choses différentes; l'intégrisme se différencie du fondamentalisme et, au sein même du fondamentalisme, il existe des courants mystiques, d'une part, et fanatiques, de l'autre — et ce sont seulement ces derniers qui deviennent terroristes et

assassins. Ces distinctions aideraient à réhabiliter une grande majorité des musulmans du monde entier et à rendre plus facile la vie à ceux qui vivent auprès de nous en Europe.

Nos amis arabes s'étonnent ou protestent à cause du fait que nous autres, Européens des différents pays, consacrons tant d'attention à la question juive. Mais nous avons nous-mêmes créé cette question. Nous en sommes en grande partie coupables: par les *pogroms* à l'est de l'Europe et les chambres à gaz à l'ouest, à travers l'*Holocauste* et la *Shoah*. Ce n'est pas par partialité que nous y regardons, mais par responsabilité. Même le retour de la diaspora juive en Palestine était voulu par une partie de l'Europe qui cherchait à s'en débarrasser. Un éminent intellectuel arabe comme le regretté Edward Saïd, laïque par son œuvre et son esprit, a bien saisi la portée de ce phénomène. Cet aveu n'autorise personne à oublier la tragédie que vit le peuple palestinien et les mesures draconiennes prises à son encontre.

Quant au port des signes religieux «ostensibles», tels que le foulard auquel on ajoute par acquit de conscience aussi la kippa ou le crucifix, je n'ai pas l'intention de m'y attarder. Bien des choses ont été dites et redites sur ce sujet qu'il serait ennuyeux de répéter. Je me contenterai de rappeler une pensée chère à un ami récemment disparu — Pierre Bourdieu: «La question patente est le voile, celle latente est notre refus des émigrés.» Cette mise en garde mérite d'être retenue par les esprits laïques.

En créant l'Europe, il faut songer à créer aussi les Européennes et Européens. Il serait erroné d'y chercher une laïcité uniforme ou conformiste, obligatoire pour toutes et pour tous. Il s'agit d'affirmer une laïcité plurielle dans une Europe pluraliste — celle qui réunit l'Europe d'aujourd'hui et l'autre Europe d'hier. Et qui ne soit pas uniquement eurocentriste.



## Professor Enrique Banús

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1. What is Europe? Of course, this short text cannot be the place to give an adequate answer to this question. In a primary reality, it is a more or less diffuse geographical area. And probably this is the only point in which there is no debate. The other 'Europes' are visions, constructs, interpretations of history, culture(s), identity/ies. And they are not shared by all the citizens in this continent – because this geographical area has been settled by different peoples who have made the history and who have told the story of their history, who have defined their identity, which is being defined also by other peoples, who have determined also relations (to the territory, to the others, to the others' territory). But definitions and relations have not been seen in the same manner by one or other people. And the question: 'who belongs to the people?' has experienced different answers. Processes of inclusion and exclusion, efforts to be included or self-exclusion processes have marked Europe's history. The clash of interpretations, the clash of images and stereotypes, the fight to include or exclude (or to avoid self-exclusion) have marked centuries of European history.

2. The 'Europe' of the European integration is an attempt to establish a new interpretation, a new vision and to assure that this interpretation can become a long-term reality, dominating previous interpretations: the Europe of peace and freedom, of human rights, of safety and justice. This Europe has convinced generations of Europeans by the force of remembering the common past of destruction and blood. But this kind of assessment is no longer enough: the generations which are being and will be decisive in Europe no longer remember 'the other Europe'. This Europe has to convince now with other arguments. The 'European Europe' (the 'Europe of the European Union') is in a key moment of its history, in the moment in which – like in the Olympic Games – the fire has to be transmitted to the next member of the team. But, in that case, the next member of the team has grown in a completely different frame. The 'European Europe' will not persist if it is not accepted by the next generation: it needs a supporting society. Institutional dynamics can replace – this is the experience of the last decades – a lack of enthusiasm, but not a long-term lack of conviction.

3. In that context, 'the youth' in Europe becomes not only a sociological or economic factor, but also a decisive factor for the future of the 'European Europe'; it will have to deal with a very complex situation, more complex – I dare to say– than the post-war Europe, in which the 'European Europe' is born. The geographical borders of the Union will probably be defined in 10 years, but within these borders the challenges will wait for people wanting to face them. Immigration will cause (and is already causing) new processes of inclusion/exclusion and new definitions of identity; the difficulties to maintain the 'welfare state' will question the solidarity between the generations; the unemployment, also due to 'delocalisation' to third countries not respecting the social changes, may provoke tensions and probably motivate new poorness/richness borders within Europe's societies; the demographic evolution will carry problems and challenges to a new dimension.

4. The current youth in Europe will have to deal with this panorama. With which instruments? The 'European Europe' has been made on the basis of relatively wide shared values, in which also religion has had a widely accepted role. There was no problem to accept 'Christian humanism' as one root of the values the 'European Europe' would have to guarantee. Also *laïc* France was able to accept the symbolic power of religion when organising the decisive DeGaulle/Adenauer meeting in a cathedral. The German Grundgesetz after World War II did not doubt to mention God as an indication that the last foundation of the constitutional values laid outside the disposition of the State (a tendency which has found another expression in the so-called

*Ewigkeitsklausel*, those articles which can never be changed, and which are not at the parliamentary majorities' disposal).

5. Things have changed considerably, and regarding the European Constitution there has been no consensus to mention the Christian roots in the preamble. The consensus around the 'Christian humanism' as one of the founding elements of the 'European Europe' is broken. And the question arises, what role should religion play in the Europe to be transmitted to the youth that will reinterpretate it? There is no 'harmonisation' within the European Union, either among the citizens or among the official positions of the governments of the Member States. The debates on the Constitution have shown this very clearly. And, whilst the necessity of interreligious dialogue is underlined, the dialogue between the two main positions within the Union seems impossible. A combatant *laïcisme* (let us maintain the French term) seems to break the consensus about the historic and symbolic value of the Christian background for Europe, although on the other side no one sincerely doubts that the separation of Church and State, the recognition of the autonomy of the political sphere, has represented considerable progress in Europe. With this background it was possible to overcome the mixture, that had terrible consequences, of religion and politics: the separation of 'the two cities' appears to be a consolidated fact in Europe: it is part of 'modernity'.

6. In other geographic and cultural areas, however, this vision is described as 'Western' and not shared. And it is suggested that there can be 'multiple modernities', some of which do not include necessarily this separation. These cultures are now present in Europe as a result of immigration. What will the dialogue be like between these different visions of social life? Shall we insist on the fact that this is a part of the common European heritage which has to be shared if someone wants to be considered as a European? Is a democracy imaginable without this separation?

7. But *laïcisme* wants to go further and to let religion be an exclusively personal and private belief, without social manifestations, without social presence, without social relevance. What is more: 'provoking' religious manifestations will be expelled from the public space, at least in the part of the public space which is controlled by the State. The educational system will not transmit religious content. Legislation should be free from all religious reminiscences, from all concessions to the ethical positions of churches and religious groups. The State has the right to organise itself without interference from religious motivated forces which – history is able to show several examples – often maintain conservative attitudes hindering social progress. In this perspective, *laïcisme* becomes a logical consequence of an enlightened modern mentality, in which all religious attitude is suspiciously near to fundamentalism.

8. The argument could fit in times in which progress is one of the shared values, one of the main goals of the population. But in the last decades the enthusiasm for progress and the belief that there is a continuous ascending movement in the history of humanity have suffered as a result of the problematic consequences of progress, for example for the environment, for the existence of minority cultures, for world peace. Only, 'progress' is not enough as justification for legal measures. The abolition of slavery was undoubtedly a progress, because human beings have recovered freedom. The abolition of the death penalty all around the world would be undoubtedly progress, because errors and deaths of innocents could be avoided. In both cases, we are in front of important progresses because these measures mean a symbol, a sign, that humanity recognises that it is not, respectively, the lord of freedom and the lord of life and death. Freedom and life are not at our disposal. Abortion would be progress only if we were sure that the embryo is not a human being; if this sureness is not given, abortion could mean the death of an innocent person. However, this is not a question of *laïcisme* or religious marked ethic conviction, but of the messages you want to disseminate in society.

9. Regarding the presence of religious content in education, the main point is probably what the goal of the educational system should be. As a thesis I would dare to say that education has to provide the keys to find one's own place in the world, which obviously is always a personal process of recognition of one's vocation and knowledge of the environment in which this vocation has to be realised. Knowledge of the world is transmitted partially by the educational system, which is given the keys to decode the numerous symbols surrounding us continuously. In Europe, a part of these symbols come from a Christian heritage. The aim of schools cannot be to 'create' believers, but to eliminate ignorance, to teach the capacity to discover the messages linked to the symbols. The position of everyone in front of these messages is a personal decision. When we really believe in enlightenment, then we also believe that informed decisions are better than ill-informed ones.

10. The attraction of *laïcisme* is probably linked to the fact that religion is showing, in the last years, its worst face: the fundamentalist one. Religious fundamentalism is connected with widely disseminated tendencies in the last years. Probably as a reaction to globalisation (which has gained force as a reality and as a myth) and to the development of the new world order after the collapse of Communism, new 'identitarian' schemes have arisen with great force. Identity is now seen in connection with culture; in fact, the term 'cultural identity' has been extremely successful. And religion is often seen as a substantial part of culture and, therefore, as a part of identity. For example, Huntington's very successful (even if wrong and dangerous) model of the 'clash of civilisations' is operating with the religious factor to describe the different civilisations. So, religion has become a factor of real or possible conflict in the world. And in some conflicts the parts in conflict are indeed using religion as an argument for their war or terror actions. The argument is always based on the threat which another civilisation is supposed to be to one's own civilisation. The worst mechanism to build or consolidate identities appears here under new circumstances, the mechanism to create cohesion claiming for the necessity to protect against the risks coming from 'the other'.

11. Looking at this instrumentalisation of religion, *laïcisme* seems to be an alternative: if religion does not appear in public life, this phenomenon could be overcome. But *laïcisme* and fundamentalism are shaping the same attitude: to consider religion primarily as a cultural element. Both attitudes are ignoring the other, more profound dimension of religion. It is true that religion is linked to culture, it has consequences for culture and cultural expressions. And there is no doubt that some cultures are historically marked by concrete religions.

12. But religion is not only a cultural element. It affects firstly the individual: its attitude in front of transcendence, its relationship with God. And the expression of one's religious beliefs is a human right, whose manifestations are limited only by others people's human rights as protected by the legal system. In this frame, the supreme attitude from the public sphere towards religion has to be respect, the recognition of the State's action in front of a fundamental human right, which always marks the frontier for the State – with the exception of those expressions of human rights which constitute a danger for the State (is this given by a concrete style of presenting himself or herself in society?). Respect is more than tolerance, it implies an active attitude instead of merely passive tolerance. Tolerance – if not respect – can be expected also by society towards all the decisions of individuals in religious matters, including conversion to another religion or another belief, which may not be the religion or belief traditionally linked with the culture *a quo*. In the aforementioned collective sight of religion, belonging to a culture implies belonging to a religion; conversion to another faith can, then, be considered as treason to one's nation or culture. To avoid this, to guarantee free choice in these matters is also the scope of a *laïcist* State.

13. Behind these problems there is a notion of 'identity' which shall be overcome. The traditional view on identity is based on monolithic solutions: one State, one identity (one culture, one religion). We have to think in multiple identities, we have to realise that one citizen's identity is constituted of different elements, by linkages to different communities. This creates networks which give a structure to society. The State has to govern all this network expansion in the society, because the networks are able to stabilise or destabilise societies. It has to govern it but with the minimal interference in citizens' freedom. Also religious communities can stabilise or destabilise society. Therefore, dialogue between the State and these communities has to exist and to be fluent in order to recognise the forces building the community or destroying it.

14. But, again, the State can interfere only in that sphere of religious life which affects State life, and has to ensure that the religious options of the citizens can be realised (always when they are compatible with the societal ground order) without discrimination: because religion means one of the most profound spheres of realisation of a vital project and, therefore, of freedom. And 'religion' means here to believe or not, to manifest or not one's own beliefs, to be a member of a church or a confession or not, to change religion or belief or not. To pray or not. To include a transcendent reference in life or not.

15. Only this attitude of openness for a human right, of support for individual decisions, of recognition of the linkages which build society and express the richness of a mature society can give sense to interreligious dialogue, which aims at conflict prevention, mutual knowledge and tolerance. Interreligious dialogue is too important to be reduced to an instrument of tolerance. Could important aims for this dialogue not be to bring together the arguments in favour of the recognition of this human right, without penalties or discrimination at the legal or the social level? The European Union has committed itself with the creation of a space of liberty, security and justice. It includes, of course, the fulfilment of human rights, in which religious freedom is included. Fostering interreligious dialogue, the European Union is realising a part of the programme given for the 'new Union', the post-market Union (which has been completed with the single currency), the Union of the 21st century.

16. This Union will be realised by today's youth in the future. Young people will take on the Union that the previous generations will transmit, and they will recreate this Union according to their priorities. The Union is, like other communities, submitted to these continuous transmission processes. And transmission means always a complex network of interpretations. These interpretations will change the Union again and again. *La laïcité* is one consolidated element of the sociopolitical European heritage. Respect for the religious freedom – is this a priority in Europe?



# CLOSING SESSION

# SÉANCE SOLENNELLE DE CLÔTURE

SPEECH BY

Mrs Fatema Mernissi

SPEECH BY

M. Romano Prodi

## Closing session Séance de clôture

### Speech by Mrs Fatema Mernissi, writer

#### George Orwell in Marrakech in 1938: The difficulty of being a tourist in an Arab country

Few people know that George Orwell (1903–50), the famous author of *Animal farm* who devoted his life to the promotion of freedom and democracy, visited Marrakech in 1938. It is intriguing that Orwell, who fought his entire life against the fascists, first with force by enrolling in the militia of the Popular Front to fight against Franco in Spain in 1936, and then with the pen, ridiculing totalitarian leaders in *Animal farm* in 1943 and *1984*, three years later confessed that communicating with Arabs was beyond his grasp <sup>(180)</sup>, a confession interpreted later by some Arab scholars as a racist statement. Unlike many of his trips abroad which were motivated either by work or political engagement, his decision to visit Marrakech was due purely to health reasons.

Accompanied by his wife Eileen, Orwell came to Marrakech in the winter of 1938 on the recommendation of his doctors, who suggested its dry climate to fight his tuberculosis. On 3 September he and Eileen sailed from Tilbury tourist class on the *SS Stratheden*... On the passenger list he had designated himself 'profession: novelist', while Eileen had written 'profession: nil'. He had taken a patent seasickness remedy which he was pleased to find worked, and, according to Eileen, 'walked around the boat with a seraphic smile watching people being sick...' <sup>(181)</sup>. In fact, it was in Marrakech that he wrote his novel, *Coming up for air*, published in 1939 <sup>(182)</sup>. It was surprising that, as a militant for democracy and a prominent star of the avant-garde European left, he himself noted that his trip to Morocco was a defeat of sorts, given his inability to communicate with the Arabs, in spite of the fact that he liked them: 'I like the Arabs, they are very friendly... But I've made no real contact, partly because they mostly speak a kind of bastard French and so I've been too lazy to learn Arabic' <sup>(183)</sup>. Of course one thinks immediately of language when one has trouble communicating with strangers. And it's true that in Morocco even our Arab brothers from the Middle East, like the Syrians or the Saudis, feel lost when they come as tourists because we, the Moroccans, have the art of speaking a cocktail of languages, mixing Arabic with French, but especially with Berber, something which escaped Orwell.

But he was too intelligent to reduce the difficulty of communicating to a question of language, because all of us have experienced entering into deep exchanges with foreigners despite the speech handicap. In fact, it is the question of affinity which facilitates communication, and the first Muslims, dazzled as they were by the idea of a universal religion, particularly the Sufis like the ninth century Iranian Bistami (777–849 AD), recommended travel as a way of knowing oneself. Bistami stressed that we often have trouble talking with close family members who do

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<sup>(180)</sup> Sonia Orwell and Ian Angus (eds), *The collected essays, journalism and letters of George Orwell*, Harmondsworth, Penguin, 1970. Vol. I, p. 407.

<sup>(181)</sup> Gordon Bowker, *George Orwell*, Chapter 12: 'The road to Morocco', Little Brown, July 2003, p. 243.

<sup>(182)</sup> Sonia Orwell and Ian Angus (eds), *The collected essays*, op. cit.

<sup>(183)</sup> Sonia Orwell and Ian Angus (eds), *The collected essays*, op. cit.

not share our ideas while engaging in intense dialogues with strangers who do: 'God! How some people who are near are really very far from us. And how some distant strangers can be so close!' (184).

Orwell was sophisticated enough to grasp that his incapacity to communicate with Arabs was at a level other than that of language. He was himself shocked at his incapacity to communicate with the citizens of a country like Morocco, at that time doubly colonised by the armies of Spain in the north and those of France in the south. He knew that wherever foreign armies were stationed, resistance was to be expected – a resistance to which Orwell was particularly sensitive because he was born in 1903 in colonial India, in the village of Motihari near the border of Nepal, where his father worked as an agent of the Opium Department of the Indian Civil Service (185).

Not only had Orwell, as an Englishman, been particularly sensitive to colonisation since his youth, but as an adult he saw himself as a man who had dedicated his life to defending liberty. Every line he had written, he declared in his celebrated essay, *Why I write* – a veritable testament, written in 1946, just four years before his death in London in 1950 – was a blow directed against totalitarianism: 'Every line of serious work that I have written since 1936 has been written, directly or indirectly, against totalitarianism and for Democratic Socialism as I understand it' (186).

It is because we are dealing with an engaged intellectual, accustomed to painful exercises of self-analysis and introspection, that we can understand why his failure to communicate with the Arabs became an obsession for Orwell, despite the fact that he came to Marrakech as a tourist – and a sick one at that. In fact, already then in the Marrakech of 1938, Orwell saw with his strikingly futuristic genius the strategic questions globalisation is forcing all of us to address today regardless of our nationalities, and which is the focus of this book: the political dimension of tourism. Although we like to think of tourism as an 'escape' from our local political engagements and we persuade ourselves that we do not have to care about the strangers in whose countries we choose to spend our holidays, the stark reality is that such an abrupt suspension of emotional concern is impossible for many. This unavoidable political dimension of tourism is emerging as a planetary issue more than ever before because of globalisation, that is, the virtual abolition of borders between nations. In fact, globalisation condemns us all to become tourists and to spend a good part of our lives travelling, whether for work or for pleasure. And more for work than for pleasure. Whence the necessity to clarify for ourselves some of the rules of the game so as not to miss the chance of communicating with the strangers whom chance places on our route.

Nothing disturbs me more than to find myself faced, when travelling far from Morocco, with a stranger with whom I have trouble communicating: 'For God's sake Fatema! What a waste of money and opportunities to come so far just to regress to the animal state!' I found myself repeating in an utter state of helplessness. That a human being is 'an animal endowed with *nutq*' (self-expression) is the first message my Koran school teacher bombarded me with since the age of three. 'Allah distinguished human beings from animals with *nutq*, my dear child'. This is why I felt so concerned with Orwell's dilemma in the 1930s in Marrakech. To follow his train of thoughts and doubts on the difficulties and the challenges of communicating when one

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(184) Bistami, *Sufi dances* (Shatahat as-Sufiyya), introduced and commented by Abder-Rahman Badawi, Wekalat al-Matbou'at, Koweit (date not indicated), p. 85. There is an excellent French translation of Bistami by the Tunisian writer Medheb, *Les Dits de Bistami*, Fayard, Paris, 1989.

(185) 'Biographie de George Orwell', online: <http://www.k-1.com/Orwell/Index.cgi/about/biography.html>

(186) Rhodri Williams article, 'Essays: Orwell's political messages', published online on the following website: <http://www.k-1.com/Orwell/Index.cgi/opinion/essays/rhodi.html>



ventures into a foreign country seems to me an extremely important issue today. Especially when one is politically engaged, something which globalisation imposes on everyone, as was shown by the spontaneous demonstrations of citizens around the world when President Bush began to speak of bombing Iraq after the attack of 11 September 2001.

*Page 9 photo caption: This photo, taken from the terraces of the medina in Marrakech, symbolises the birth of the digital community where democratisation comes through access by everyone to nutq, the right to self-expression. The imam knows that, next to every minaret, there are hundreds of satellite dishes which allow citizens to express themselves in interactive talk-shows like 'al Minbar' on the Al-Jazira network.*

### 1. Orwell's dilemma: tourism and political engagement

Personally, I must admit that a sore throat which pins me in bed is enough to demobilise me politically. Thus my admiration for Orwell's determination to understand why he could not communicate with the population of Marrakech. He thought at first that the handicap was his status of tourist. It is true that he often had the habit of travelling on specific missions, such as when he decided to return to Asia, once he completed his studies, to work as a police officer in Burma where he stayed five years, from 1922 to 1927. Another occasion was in 1936, when he enrolled in the militia of the POUM (Partido Obrero de Unification Marxista) to fight against the fascists in Spain: 'This trip [to Marrakech] is something quite new to me, because for the first time I am in the position of a tourist' <sup>(187)</sup>. Since, by definition, a tourist is someone who travels with the sole objective of having fun, it would seem at first glance that nothing forced him to communicate with the populations of the countries he visited. And Orwell added that he would have been able to communicate better had he come with a specific military mission, something common among European intellectuals then, who profited from the colonial armies in order to travel: 'The result is that it is quite impossible, at any rate, to make any contact with the Arabs, whereas if I were say on a gun machine expedition, I should immediately have some entry to all kinds of interesting society in spite of the language difficulties' <sup>(188)</sup>. Professor Fouzia Rhissassi, a Moroccan expert on English literature who devoted an excellent essay, 'Orwell's Marrakech', to him, came to the conclusion that, despite his being of the left, he remained a real European racist: 'For all his sympathies with the underprivileged Moroccans, there is no doubt that for Orwell it is England which is the queen of the world. It is difficult, in fact, to find any marked trait in the Moroccans' character or behaviour which is common to both north Africa and England' <sup>(189)</sup>. In her opinion, Orwell saw humanity, despite his avant-garde ideas, as the monopoly of the Europeans alone and not something shared by all. 'There is no common humanity,' she concluded <sup>(190)</sup>.

But in my view George Orwell's communication difficulties were due not so much to the fact that he was a racist than to a pragmatic technological problem: in 1938 there was no Internet and no cyber-café, neither in London nor in Marrakech. And the cost of the means of communication, whether the printed press, the radio or even the telephone, was then so exorbitant that only fascists like Hitler could afford them.

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<sup>(187)</sup> Sonia Orwell and Ian Angus (eds), *The collected essays*, op.cit.

<sup>(188)</sup> Sonia Orwell and Ian Angus (eds), *The collected essays*, op.cit. Vol. I, p. 309.

<sup>(189)</sup> Fouzia Ghissassi 'Orwell's Marrakech and the Protectorate Tourist Guide', published in *Hésperis-Tamuda*, faculté de lettres et sciences humaines de Rabat, université Mohamed V, vol. XXXIV, 1996, p. 186.

<sup>(190)</sup> Fouzia Ghissassi 'Orwell's Marrakech and the Protectorate Tourist Guide', op.cit.

Orwell could not make contact with the Moroccans who fought for liberty because they did not have access to the means of communication. The revolution we are living in 2004, 66 years after Orwell's Marrakech visit, thanks to the new information technologies, gives us the chance Orwell did not have, to make contact everywhere with those who are fighting for the same causes. To send a 40-page document from Madagascar to Ivory Coast requires five days by mail (USD 75), 30 minutes by fax (USD 45) and two minutes by e-mail (less than 20 cents) <sup>(191)</sup>. And it is thus not surprising, observe the editors of the UNDP (United Nations Development Programme) *Report on human development*, that the number of computers with direct online connections rose from 100 000 in 1988 to more than 36 million in 1998, and that it is excluded minorities, like the lower castes in India, which are the most desperate consumers. It is the fusion of information technology (the computer) and communication (the telephone), explain the United Nations experts, which shrinks the limitations of cost, time and space and thus lowers the price. 'A car would cost USD 3 today,' add the United Nations experts, 'if the productivity of the automobile industry had progressed at the same rate' <sup>(192)</sup>.

It is thus the price one had to pay to have the right to express oneself, communicate one's ideas and make one's voice heard which explains why the lovers of democracy in third-world countries were invisible and their voices unheard in 1938. And I am persuaded that the presumed racism of many Europeans, as we will see in the case of Orwell, was due mainly to the difficulties of informing themselves. Moreover, Orwell tried hard, despite his illness, to make contact with the fighters for democracy in Morocco.

## **2. Orwell was not racist, he was simply uninformed: he had never heard of the Moroccan leader Abdelkrim Khattabi**

In 1938 making contact with the Moroccans who dreamed of democracy was an impossibility because they could not afford the means of information to spread their message worldwide. Despite his attempts to connect, Orwell arrived at the conclusion that 'As far as I can judge, there is no anti-French movement of any size among the Arabs, and if there were one it would almost certainly be nationalist rather than socialist, as the great majority of the people are at the feudal stage and the French, I fancy, intend them to remain so' <sup>(193)</sup>. This evaluation of the political situation in Morocco in the 1930s by Orwell was of course wrong: 'News chronicles have preserved for us the names of 30 or so leaders who directed resistance against the French and the Spanish from 1900 to 1935,' observes one of the most meticulous historians of the modern Mediterranean, the Moroccan Abdallah Laroui <sup>(194)</sup>. He proves, with supporting arguments, that at least one among the leaders was not in the category of nationalist and positioned himself clearly in the fight against totalitarianism. This was Abdelkrim Khattabi, who was born in 1882, 20 years earlier than Orwell. He fought to install a secular republic in the Rif of northern Morocco in the 1920s, because he had a particular horror of both the local religious fanaticism, and the French and Spanish colonial armies. Khattabi was immediately identified as a particularly dangerous enemy by France and Spain, since his insistence on human rights unveiled the archaic side of the Europeans who were justifying their colonisation by their 'noble desire to modernise and democratise the backward Arabs'. Destroying Khattabi's resistance

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<sup>(191)</sup> My source is the French version of the UNDP report 'Les nouvelles technologies et la course mondiale au savoir', *Rapport mondial sur le développement humain* 1999, PNUD, p. 58.

<sup>(192)</sup> 'Les nouvelles technologies et la course mondiale au savoir', *Rapport mondial sur le développement humain* 1999, PNUD, p. 58.

<sup>(193)</sup> Sonia Orwell and Ian Angus (eds), *The collected essays*, op. cit. Vol. I, p. 398.

<sup>(194)</sup> Abdallah Laroui, *Les origines sociales et culturelles du nationalisme marocain: 1830-1912*. François Maspero, Paris, 1977, p. 424.

movement became their obsession and only when they joined forces did the French and Spanish armies manage to force him into exile where he died in 1963.

Thus 10 years before Orwell went to Spain to take up arms against Franco's fascism, a Moroccan leader, Abdelkrim Khattabi, fought on the opposite side of the Mediterranean, in the mountains of the Rif which stretch along the Moroccan Mediterranean coast, for the same cause. Khattabi was an admirer of Kamal Ataturk who had installed the first secular republic in a Muslim country and had given women the right to vote in 1924. Khattabi had two enemies, the colonial armies which occupied the country and the religious fanaticism which gnawed at local political institutions: 'I admired the policies followed by Turkey,' he explained. 'Muslim countries cannot become independent without first freeing themselves from religious fanaticism' <sup>(195)</sup>. To create a society where the individual could reflect and express himself freely was Khattabi's dream. A dream which turned out to be a nightmare for the governments of Spain and France which mobilised their best soldiers to prevent its realisation: 'Against 20 000 armed Riffians [inhabitants of the Rif], the Franco-Spanish concentrated 800 000 men supported by several air escadrilles... Crushed by numbers and subjected to a veritable deluge of fire, the Riffians had to capitulate' <sup>(196)</sup>. But while Abdelkrim was deported by the victors to the island of Réunion which was part of French territory and had to stay 20 years in exile before escaping to Egypt, thousands of his partisans and sympathisers continued to nurture his dream. The same year that Orwell enrolled in the POUM militia, a delegation from Morocco went to Spain to offer its aid to the Popular Front in 1936, but with the condition that after its victory, it accord them independence. A condition which was refused, according to the historian A. Ghallab in the section devoted to this question which he entitled 'The Kutla (coalition)'s attempt to overthrow the Franco regime by a counterrevolution from Morocco' <sup>(197)</sup>.

This brings us back to Orwell and to his inability to make contact with the defenders of democracy in the Arab world. Was he racist or ill-informed? Fundamentally it is not so much the answer to this question but the fact of asking it which is important, because it leads us to focus on the essential, which I will call henceforth the magnificent potential of civic tourism: the extraordinary fortune we have at the dawn of the 21st century to make contact in the four corners of the planet with those who fight for the same ideas. The dream of a planet where the citizens can weave a thousand dialogues and where terrorists have no place, which was considered a Utopia by previous generations, is our privilege today. Those citizens we will baptise henceforth 'cosmocivics', in contrast to 'cosmocrats', a term humorously suggested by two journalists in the English magazine, *The Economist*, J. Micklethwait and A. Wooldridge to refer to a dollar-obsessed 'global ruling class' <sup>(198)</sup>. Cosmocrats, explain these authors, are a wealthy ruling class who operate on a global scale: 'Cosmopolitan in taste and usually Anglo-American in outlook, these are the people who attend business-school weddings around the world, fill up the business-class lounges at international airports, provide the officer ranks of most of the

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<sup>(195)</sup> A quote from one of the most famous 1920s Arab nationalist publications *Al Manar*, Tome XXVII, No 8, 1926, p. 632, cited by Abdallah Laroui in his *Les origines sociales et culturelles du nationalisme marocain: 1830-1912*. François Maspero, Paris, 1977, p. 427, note 14.

<sup>(196)</sup> From the chapter on 'La Guerre du Rif' ('The Rif war') in *Histoire du Maroc* ('The history of Morocco'). This book which is a collection of articles (Abedalaziz Amine, Brahim Boutaleb, Jean Brignon, Guy Martinet, Bernard Rosenberger and Michel Terrasse) was published simultaneously by Hatier (Paris) and Librairie Nationale à Casablanca, 1967, p. 390.

<sup>(197)</sup> Abdelkrim Ghallab, 'La coalition du Nord dans sa lutte contre les Espagnols' in *L'histoire du mouvement nationaliste au Maroc*, Tarikh al Haraka al Wataniya, Matba'at ar-Rissala, Rabat, 1987, p. 182.

<sup>(198)</sup> John Micklethwait and Adrian Wooldridge, *A future perfect: The essentials of globalisation*, Crown Business Publishers, Random House, 2000.

world's companies and international institutions, and, through their collective efforts, probably do more than anyone else to make the world seem smaller' <sup>(199)</sup>. The authors, who estimate this new ruling class at no more than 20 million people who monopolise decision-making at the planetary scale, call them 'cosmocrats', by combining the term *cosmo* (universe) with the Greek root *crate* which means government. One finds this root in democracy (government of *demos* – the people) and in aristocracy (government of *aristos* – the best). To make sure we have clearly understood who are the cosmocrats, Micklethwaite and Wooldridge borrowed the following puzzle from *The Guardian*: 'What is the difference between Tanzania and Goldman Sachs?' And the answer is that: 'one is an African country that makes 2.2 billion a year and shares it among 25 million. The other is an investment bank that makes 2.6 billion and shares it between 162 people' <sup>(200)</sup>.

In the Morocco of 1938 which Orwell visited, the telephone was the monopoly of the cosmocrats of the moment, that is to say the European colonial elite who terrorised the country and their local allies, notably the Moroccans who helped stifle the rebellion. And it is this detour in Orwell's Morocco which will help us realise the prodigious revolution I try to capture in this book, where the previously excluded masses have now gained access to the satellite dishes (*paraboles* as they are called locally), the telephone and the cyber-café. In the digitally connected Marrakech of 2004, Orwell could have made direct contact with the Arab citizens fighting for freedom like himself. But in 1930, Orwell and the local Moroccan resistance were condemned to never join forces because the telephone was the sole privilege of the Sultan and the French army generals, that is the cosmocrats of that time. Citizens fighting for democracy like Khattabi, whom we will refer to from now on as 'cosmocivics', could not spread their message and make their voices heard.

### **3. In Morocco, the telephone of Sultan Hassan I (1892) remained a monopoly of the rich until 1990**

At the end of the 19th century the new communications technologies were introduced in Morocco with the establishment of the first modern postal service. 'It was in 1892 that Sultan Moulay Hassan I proceeded to establish a postal service for the first time in Morocco. Its regulatory text was signed in 1924 by Marshall Lyautey (the official representative of the French government). At Morocco's independence in 1956, 62 500 telephone subscriptions were listed, of which only 14 000 or 22.4 % were for Moroccans. There were only two telex exchanges, allowing use by 106 subscribers' <sup>(201)</sup>.

In fact one can say that for a century, from the time of Sultan Hassan I until 1983, things did not change very much for citizens' access to the telephone: 'Towards the end of 1983, Morocco had only about 200 000 telephone lines, of which more than 50 000 were connected to obsolescent exchanges... Furthermore, exchanges using numeric technology represented less than a 10th of the total system' <sup>(202)</sup>. Moroccans of my generation still recall the time when, to get to a telephone line, you had to enlist the help of influential connections, such as the intervention

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<sup>(199)</sup> John Micklethwait and Adrian Wooldridge, *A future perfect: The essentials of globalisation*, op. cit. p. 229.

<sup>(200)</sup> John Micklethwait and Adrian Wooldridge, *A future perfect: The essentials of globalisation*, op. cit. p. 284.

<sup>(201)</sup> 'Le Secteur des Télécommunications au Maroc', *Revue d'information de la banque marocaine du commerce extérieur*, No 274, June–July 2000, p. 5.

<sup>(202)</sup> 'Le secteur des télécommunications au Maroc' op. cit. p. 5.

of the cousin of the sister-in-law of the husband of the aunt of the director of the main post office in Rabat! And moreover all telephones which existed in the country were concentrated in the Casablanca-Rabat zone <sup>(203)</sup>.

The breakthrough of democracy in Morocco which I describe in this book is incomprehensible if one does not take into account the democratisation of access by the modest and middle classes first to fixed telephones and especially to mobile ones: 'The number of subscribers to mobile telephones multiplied 116 times, from 3 194 subscribers in 1992 to 369 174 at the end of 1999' <sup>(204)</sup>. It is ironic to note that one of the men who has contributed the most to the acceleration of the process of democratisation of Morocco in recent years is not one the leaders of the prestigious political party, but a 'prestidigitator' of telecommunications, the President of the Board of Directors of Maroc Télécom. He was proud to announce that in 2002 Maroc-Télécom was at the head of the list 'with 4.6 million mobile phones and more than 1 million fixed phone clients' <sup>(205)</sup>.

This brings us back to my favourite tourist, George Orwell. Imagine his joy in the Marrakech of the 1930s, if the Moroccans who embraced dreams of democracy could have also embraced a pretty little cell phone, and the marvellous winter he would have been able to spend in the Marrakech of 2004 where the tea seems warmer in the new civic-nurturing bookstores in the marginal districts such as Jamila's, which I describe in Chapter 4 ('Jamila's Marrakech: Books, cyber-café, solidarity and creativity').

But to be able to spot Marrakech cosmocivics who thrive in the modest suburbs, a politically inclined tourist has first to get rid of seven stereotypes about Arabs in general and Morocco in particular, following thus Sindbad's motto which Scheherazade opens her tale with in *The 1001 Nights*:

*'Who to fame aspires mustn't sleep o'night,  
Who seeketh pearl in the deep must dive'* <sup>(206)</sup>

### **Stereotype No 1: Changes happen at the centre, not at the periphery**

In the civic Morocco I have tried to capture for you in the following pages, more changes are taking place in the geographically marginal, remote, high Atlas mountain and desert villages south of Marrakech than in the Casablanca-Rabat megalopolis (Chapter 3: 'Ali Amahane, the Amazigh Sindbad'; Chapter 15: 'Zagora, enchanted by the cosmocivics').

### **Stereotype No 2: The superiority of the technologically advanced highly educated West over an illiteracy-ridden Orient petrified at the crafts age**

In civic Morocco, kids born to mothers who master the art of carpet-weaving but are illiterate surf on the Internet with an amazing dexterity. Is it because weaving is a lifelong exercise in

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<sup>(203)</sup> 'Ventilé par direction régionale de Maroc Télécom, le parc national des lignes téléphoniques fait apparaître la prédominance de l'axe Rabat-Casablanca dans lequel se concentre 54,6 % de ces lignes. La région de Casablanca concentre à elle seule 29,1 % des lignes, suivie de celle de Rabat avec 25,5 %, de Fes avec 14,3 %, et de Marrakech avec 8,9 %. See 'Le secteur des télécommunications au Maroc', op. cit. p. 6.

<sup>(204)</sup> 'Interview du président', in *Rapport annuel 2002*, Maroc télécom, p. 4.

<sup>(205)</sup> 'Interview du président', in *Rapport annuel 2002*, Maroc télécom, p. 4.

<sup>(206)</sup> The Arabic original quote is from the *The 1001 Nights* (Alf Lika wa Lila), Al Maktaba ach-Cha'bia, Beyrouth, Lebanon (date not indicated), Vol. III, p. 106. The English translation is that of Richard Burton's *The book of the thousand nights and a night*. Printed by the Burton Club for private subscribers, Vol. VI, p. 5.

concentration on a labyrinth-like project which is what a carpet is? These are some of the puzzling questions I found myself forced to ask (Chapter 4: 'Jamila's Marrakech'; Chapter 5: 'Marrakech turns virtual: let's save the snakes').

### **Stereotype No 3: Diploma-holders create more wealth than illiterates**

In the new Morocco where media coverage does not focus as obsessively as it used to on the big cities' aristocratic elite, illiterate women's contribution to the accumulation of the national wealth is more visible, mostly when it comes to carpets, a constant source of foreign currency for the Moroccan State. Yet until Delacroix and Matisse visited this country and acknowledged carpets as 'art', the locals considered them nothing more than domestic furnishings. But in the last decades, the women are taking their revenge by jumping from carpet-weaving to painting (Chapter 8: 'Moroccan Penelope: Mothers of political prisoners'; Chapter 9: 'Fatema Mella: The illiterate who weaves Tifinagh, a 25-century-old Berber alphabet'; Chapter 10: 'Look for the symbol Venus in your carpet'; Chapter 11: 'Baya dazzled Picasso and Chaibia, the illiterate who earns millions'; Chapter 12: 'In the kingdom where carpet-weavers turn painters').

### **Stereotype No 4: A wealthy person is the one who has loads of money**

In civic Morocco, the wealthiest is the person who masters the art of communication (Chapter 14: 'The mysterious mirror of Agdz').

### **Stereotype No 5: The conflict between men and women is eternal**

In the new civic spaces recently created by a booming Moroccan civil society, such as help centres and cyber-café's, men and women cooperate closely to engineer a future where solidarity is the name of the game (Chapter 3: 'Essaouira: A city where the youth improvises a cultural festival to raise funds for Regraguia's rent'; Chapters 15 and 16: 'The civic caravan: Bring your talent, your smile and join the band').

### **Stereotype No 6: To belong to two cultures (Arab and Berber) is a disadvantage because it creates mental confusion**

One reason the Berber culture was marginalised in countries like Morocco and Algeria, by those who were insisting on our Arab identity, was that cultural pluralism creates confusion in a child. In civic Morocco as I discovered during my four-year travels in the mountains and deserts of the southern part, the kids who speak two languages from early infancy such as those of the heavily Berber high Atlas mountains show a tremendous ability to master foreign languages such as English, German and Spanish. I discovered that mastering many cultural codes enhances one's communication capabilities. This theme emerges in many of the book chapters.

### **Stereotype No 7: Do not use any more the word Berber, which the Greeks gave to the inhabitants of north Africa, which comes from barbaros (someone unable to speak correctly)**

Use instead the word *Amazigh*, which means 'the free people' which is the word north Africans give to themselves. (This theme, which addresses the question of how we cope with the difference when faced with strangers and how 'cultural identities' are engineered, is a recurrent one in the book.)

And teaching ourselves how to learn from strangers and master the art of decoding the differences has indeed always been my obsession. But more so with the 11 September attack which triggered a huge destabilisation of the planet in general and of the Arab world in particular,

where the daily statistics of civilian deaths gave nightmares to many. To communicate or to die seems to be our fate and that of every other citizen of the planet who is not armed and has no intention of getting a gun. How can we benefit from globalisation which forces us to become tourists a good part of the year? And according to Nobel Prize winning economist Joseph Stiglitz, globalisation has indeed a wonderful potential to strengthen the cosmocivics' camp, since 'Fundamentally, it is the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders' <sup>(207)</sup> .

A good way to start enjoying the benefits of globalisation, I decided, is to help the tourists coming to Morocco to find their cosmocivic allies, a much needed exercise if we are to survive at all on a planet where death industries are invading the Internet to sell their messages to the young. Because, believe it or not, the very optimistic vision of Joseph Stiglitz 's communication-enhancing globalisation leaves a dark side out of the picture: The invasion of the Internet by the death-merchant cosmocrats, be they official American Pentagon military contractors selling video-games to recruit young soldiers or the clandestine Arab Ben Laden al-Qaida networks recruiting terrorists.

In a scary article very reminiscent of Orwell's Nineteen eighty-four's gloomy atmosphere, which appeared in a publication of the prestigious Council on Foreign Relations, we learn that using the Internet for war purposes is far from being the monopoly of illegal criminal groups such as terrorists: 'On Independence Day, the traditional summer blockbuster date in the entertainment industry, the US military released its new video-game: "America's Army: Operations". Designed by the Modeling, Simulation and Virtual Environments Institute (MOVES) of the Naval Postgraduate School in Monterey, California, the game, intended as a recruiting device, is distributed free on the Internet' <sup>(208)</sup>. The author adds that 'on the first day of its release, the military added additional servers to handle the traffic, a reported whopping 400 000 downloads of the game. The site continued to average 1.2 million hits per second through August'. The article argues convincingly that contrary to what was expected after the end of the Cold War, the military industrial complex did not fade away. 'It has simply reorganised itself. In fact, it is more efficiently organised than ever before... The military-industrial complex has become the military-entertainment complex' <sup>(209)</sup>. After remarking that the combination between Hollywood and the Pentagon is likely to be money-making since 'war games are big entertainment,' the author ends up attracting the reader's attention to the enormous security implications of such an industry, if only because the most likely consumers of these games are likely to be the Muslim youth al-Qaida is trying to recruit as terrorists. Of course, Muslim extremist networks have websites of their own in Arabic to spread their messages and try to attract, just like the Pentagon, new recruits who are willing to take up death and killing as their life career <sup>(210)</sup>.

But definitely the US military offering free-loading war games do help Muslim terrorist leaders tremendously in their mission, which brings us to the importance of the necessity for the civic-nurturing citizens of the planet to strengthen their solidarity and protect the youth from being hijacked by death merchants. So more than ever before, tourism has to become a civic endea-

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<sup>(207)</sup> Joseph Stiglitz, *Globalisation and its discontent*, Norton, New York, 2002, p. 9.

<sup>(208)</sup> Timothy Lenoir, 'Fashioning the military-entertainment complex' in *Correspondence: An international review of culture and society*, published by the Council of Foreign Relations, Issue No 10, winter 2002-03, pp. 14-16.

<sup>(209)</sup> Timothy Lenoir, 'Fashioning the military-entertainment complex', op. cit.

<sup>(210)</sup> See, for instance, the article on cyber-jihad on the Internet which appeared in the Italian *D-La Repubblica delle donne* of 26 June 2004 and *La Repubblica* of 26 July 2004.

your, an attempt to connect with those with whom we share a vision of a planet where the youth is free to choose life and pleasure. A planet where George Orwell's scary *1984* violence-loaded horizon is reduced to something of the past.

And, of course, George Orwell was on my mind when I started writing, ill and solitary, in a hotel room in Marrakech. I have tried, as much as possible, to spare you a suffocating academic style, while nourishing you with pertinent information, seasoned with medieval descriptions of Morocco by my favourite Arab geographers, Bakri (11th century) and Idrissi (12th century), and two fascinating historians. The first is Ibn Khaldun, the 14th century scholar from Andalusia (southern Spain) and the second is Leon Africanus whose real name is Al Ouazzane, a Moroccan scholar who was kidnapped in the 16th century by Italian pirates from the Arab coast of the Mediterranean and sold as a slave to the Pope, who asked him to describe to him his native land. I have tried in the coming chapters to share with visiting foreigners and my compatriots who spend their vacations at home what I like and especially what makes me laugh the most in Morocco, when I transform myself into a tourist.



## **Closing speech Discours de clôture**

**Romano Prodi,**  
President of the European Commission

### **Dialogue and shared values**

Vice-President,  
Honourable Members,  
Distinguished guests,  
Ladies and gentlemen,

Two years ago – in March 2002 – I opened a conference on intercultural dialogue here in Brussels. It sought to explore avenues and lay down guidelines for giving fresh momentum to dialogue between cultures – with the Mediterranean as an example and a sphere for action.

The last two years have shown how well-founded our intuition and our determination were. We rightly sensed the need for dialogue between peoples and cultures – and how pressing that need was.

Ladies and gentlemen,

Dialogue between cultures and peoples has never been needed more urgently than it is today.

There is no place for complacency. Our achievements have not always matched our ambitions. But we have done a lot since March 2002.

We have set up a Euro-Mediterranean Foundation for dialogue between cultures. It will be based in Alexandria – that city so full of significance and symbolism for Mediterranean civilisations. Alexandria is the Mediterranean's crossroads – the place where its cultures have met and enriched each other down the centuries.

The negotiations were protracted, and at times even hard-going – given the symbolic and political importance of this initiative in this period.

But we never gave up. And in the end we achieved our objective, thanks in particular to the fine work of the Irish Presidency.

The Foundation is the first example of a shared institution in which the northern and southern Mediterranean can work on equal terms to carry out joint actions. It is the first example of a new type of partnership we want to develop through new, special, ever-closer relations with all countries around the Mediterranean.

Thanks to our neighbourhood policy – and over these five years we have worked hard to bring it into existence – we want to turn the Mediterranean into a haven of peace. We want to put it back at the centre of our political action. And we want to take full advantage of the momentum that is coming from Asia, which could turn the Mediterranean into a powerful economic and trading area.

Peace and development across the Mediterranean – and that means Jerusalem first and Baghdad too – are vital to achieve the new global balance that is needed more and more urgently with every day that passes.

The Foundation is a key instrument for taking new, practical action to foster intercultural dialogue. All Euro-Mediterranean partners now need to help to make this initiative a success. And the first step is to make sure it has an adequate starting budget.

It is also vital to ensure the Foundation and all players involved in its work have total freedom and autonomy.

We have also given a new, meaningful Euro-Mediterranean dimension to Community programmes – such as Erasmus Mundus and Tempus MEDA. To some extent, this has foreshadowed our comprehensive proposal for a new policy to build special relations with all our neighbours – the European neighbourhood policy.

Through these initiatives, we are seeking to give the human dimension the place and role it deserves in our action in the Mediterranean region.

The High-Level Advisory Group on dialogue between peoples and cultures – which I set up – has wound up its work.

It has provided a framework for reflection and guidance on imparting fresh momentum to relations between the Mediterranean's peoples and giving practical expression to the values they share.

The group's report sets out 20 proposals under three headings. These stress:

- education for learning about diversity and transmitting knowledge of the other;
- mobility, exchanges and skills; and
- the media as an instrument for promoting equality and equal knowledge.

I take this opportunity to greet the members of the High-Level Advisory Group present today – such as Malek Chebel, Simone Susskind, Bichara Khader, Predrag Matvejevic and Fatima Mernissi.

It is no coincidence they have followed up the work of the group by taking a leading part in discussion here on such absorbing topics as:

- networks around the Mediterranean;
- the contribution of women and civil society;
- citizenship and social changes in Europe; and
- young people and religion.

In their contributions to discussion on these topics, several participants have enriched the Commission's political reflection on what dialogue should actually entail.

As Viviane Reding said yesterday, we Europeans must open up more and more to a pluralist, multipolar world where democracy and dialogue are the guarantees of peace and mutual respect.

And let us bear in mind what José Maria Gil-Robles said about dialogue being a method, a path – not an end in itself.

That is why several speakers have stated so clearly that action must target the present and be increasingly interdisciplinary in order to mobilise the largest possible number of actors – politicians, civil society and those Vice-President Lalumière called the *dialoguers*.

As she stressed, no actor is perfect and none is self-contained. They are all needed in a pluralist approach to dialogue whose long-term aim is to create a Euro-Mediterranean public.

Europe – which 'has succeeded in unifying itself' – has heeded the call from Ms Tallaway, the United Nations Under-Secretary-General and Executive Secretary for the Economic and Social Commission for Western Asia, and has made its own experience available to the international community.

Putting the human being at the centre of policy-making means taking the time to think and the time to act.

The period that elapses between events like today's meeting and the moment practical action is taken illustrates the priority and importance we assign to the development of this type of relation with our partners and neighbours.

And we have used this time to put intercultural dialogue and the human dimension of our action at the centre of our new political project for the Union in the years to come.

Our proposal for the Union's policy priorities for 2007 to 2013 aims to give new, practical substance to the concept of European citizenship.

It does this by opening up opportunities for direct experience of what European citizenship and values mean in practice – values such as freedom, mutual respect, tolerance, openness and solidarity.

We aim to do this through intercultural dialogue, people-to-people contacts, youth exchange projects and participation in cross-border projects.

Various proposals – such as the promotion and extension of the European Voluntary Service in the Mediterranean – are clearly inspired by the High-Level Advisory Group's report.

We also aim to open new educational, cultural, media, audiovisual and youth programmes to participants from neighbouring countries.

As I said two years ago, intercultural dialogue is meaningless unless the principle that all cultures enjoy equal dignity is matched by an acknowledgement that every individual enjoys equal rights.

Commitment to dialogue and cooperation is a mark of respect, not a sign of weakness on the Europeans' side, or that of our Mediterranean partners.

The Union's commitment to dialogue indicates no lack of courage or conviction among the Europeans, as some would have us believe.

On the contrary, our belief in dialogue stems from respect for the Union's partners and neighbours and the determination to hold true to our own values.

Tragic developments are unfolding before our eyes in Iraq and the Middle East. They underline the futility and hopelessness of any approach that seeks to found values by force of arms.

Shared values can only be established through dialogue.

You can propose a system of shared values. You can offer your partners and neighbours the benefit of your soft power.

But no system of values – however commendable – can be imposed unilaterally.

And new walls cannot bring any real security. The way we see it, peace and security means tearing down the walls. It means fostering new types of dialogue and cooperation that heal the scars and put an end to past divisions between States and peoples.

Fighting terrorism calls for firmness, for our values must be defended. And it also demands exemplary behaviour in harmony with those values from our democracies.

The European Union has a record it can be proud of. It is a story of peace, mutual understanding and shared commitment.

It is the first example of a democracy that goes beyond national borders.

Its procedures may be cumbersome, but they are profoundly democratic. And they are based on the free will of all the States and peoples involved.

It is our duty to offer our experience and our model in support of peace and reconciliation in other parts of the world.

Thank you.



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