Institut Européen
d'Administration Publique

European Institute
of Public Administration

EIPASCOPE

Contents

No. 1994/2

* **The EFTA Court**
Steen Treumer

* **La transparence et l'information européenne**
Veerle Deckmyn

* **The Right to Vote and Stand for Election to the European Parliament**
Dr Epaminondas Marias

* **The US and Europe in a Changing World**
Martin Wolf

* **EIPA Provisional Programme of Activities**

* **Annonces**

* **Nouvelles institutionnelles**

* **EIPA Staff News**

* **Recent and Forthcoming Publications**

The EFTA Court[1]

Steen Treumer
Lecturer, EIPA

Introduction

In the relationship between the European Union and the EFTA States nearly all attention has recently been drawn to the enlargement negotiations of Norway, Sweden, Finland and Austria, which were recently successfully concluded.

However, it should not be forgotten that the accession of the abovementioned EFTA States still depends on the outcome of their respective referenda relating to the enlargement issue. The agreement establishing the European Economic Area (EEA), which entered into force on 1 January 1994, is at present the zenith of cooperation between the European Union and the EFTA States and the EEA Agreement could remain of importance if the outcome of the referenda in one or more of the EFTA States is negative. It should be mentioned that, besides Norway, Sweden, Finland and Austria, Iceland is also among the EFTA States which are party to the EEA Agreement. Liechtenstein has postponed its ratification due to its close relations with Switzerland which was unable to ratify following its referendum in 1992.

The EEA Agreement deserves further attention due to the possibility that it may serve as a model for the European Union in later negotiations with other countries, especially with Eastern European countries which most likely will not be able to accede as full members for some years to come but may like to be associated with the Community within a multilateral and institutionalized framework.

The purpose of this article is to present the EFTA Court and to give an introduction[2] to the organization, composition and competences of the Court and the relationship to the Court of Justice of the European Communities (abbreviated to CJEC in the following).

The Legal Basis for the Creation of the EFTA Court

The EEA Agreement does not create any institution or organ for its judicial review, enforcement or surveillance. However, according to Articles 108 and 109 of the EEA Agreement, the EFTA States are under an obligation to create such institutions, i.e. the EFTA Court and the EFTA Surveillance Authority, by means of a separate agreement amongst themselves. The provisions to fulfil this undertaking can be found in the ESA/EFTA Court Agreement' (Agreement on the Establishment of a Surveillance Authority and a Court of Justice signed in Oporto on 2 May 1992). To a large extent, the ESA/EFTA Court Agreement contains provisions which reproduce or closely follow corresponding provisions in the EC Treaty.

Part IV of the Agreement deals with the EFTA Court and the main provisions in this respect can be found in Articles 27 to 41. These provisions correspond to a great extent with Articles 165, 167, 169-178, 185 and 186 of the EC Treaty. In addition, Part V, General and Final Provisions, contains various provisions of relevance to the functioning of the Court in Articles 42-46 and 48. The Statute of the EFTA Court is contained in Protocol 5 to the ESA/EFTA Court Agreement.

Organization and Composition of the EFTA Court

The seat of the Court is Geneva, Switzerland, which was decided by common accord by the governments of the EFTA States involved, and the EFTA Court is a permanent court, as is the CJEC.

The EFTA Court is to consist of independent judges to be appointed by common accord of the governments of the EFTA States for a term of six years, although every three years there should be a partial replacement of the judges. No nationality requirement is stipulated in the ESA/EFTA Court Agreement but there is in fact one judge from each of the 5 EFTA States which are party to the EEA. The appointed judges are: Kurt Herndl (Austria), Leif Sevòn (Finland), Thór Vilhjálmsson (Iceland), Bjørn Haug (Norway) and Sven Norberg (Sweden).

The judges elect the President of the EFTA Court from among their number for a term of three years, but he may be re-elected. Leif Sevòn, former judge at the Supreme Court of Finland, has been elected President.

The EFTA Court will only sit in plenary session, which is one of the aspects in which the rules differ from those governing the CJEC. This was decided to be the best starting point until experience is gained from te Court's operations. At the request of the Court, the governments of the EFTA States may, by common accord, allow it to establish chambers. The EFTA Court has no advocates-general, contrary to the composition of the CJEC.

A very important aspect regarding the organization of the Court has been the decision to choose English as the working language of the Court. The EFTA States have used English as EFTA's only working language for all the years it has existed and throughout the EEA negotiations. The main exception to this choice relates to questions for interpretative opinions, the advisory opinions', which may be put forward and answered in the language of the national court. The working language of the CJEC is French. English is not the mother tongue of any of the present EFTA States and the choice of English as working language attributes a higher degree of equality in this respect than within the European Union. It will be interesting to see whether the accession of these EFTA States to the European Union will lead to any changes in the number of working languages at the CJEC.

As to the remaining rules relating to the organization of the Court, it can be said that the similarities between the EFTA Court and the CJEC clearly outweigh the differences.

The Competences of the EFTA Court

These competences correspond to a large extent with the competences of the CJEC, the most important difference probably being the replacement of the preliminary rulings procedure by the procedure for advisory opinions.

The EFTA Court is competent for five main types of cases:

1. infringement proceedings initiated by the EFTA Surveillance Authority against an EFTA State;

2. settlement of disputes between EFTA States relating to the EEA;

3. actions to annul a decision of the EFTA Surveillance Authority;

4. actions against the EFTA Surveillance Authority for failure to act;

5. advisory opinions to the national courts of the EFTA States.

The infringement procedure has its legal basis in Article 31 of the ESA/EFTA Court Agreement which, with a minor difference, is a reproduction of Article 169 of the EC Treaty. Under Article 33 of the ESA/EFTA Court Agreement, the State is obliged to take the necessary measures to comply with the judgment.

The settlement of disputes is regulated by Article 32 of the ESA/EFTA Court Agreement, which differs from the corresponding provision in Article 170 of the EC Treaty in that the EFTA States have no obligation to bring the matter before the EFTA Surveillance Authority before it is brought to the EFTA Court. The dispute can relate to the interpretation of the EEA Agreement, the Agreement on the Standing Committee of the EFTA States or the ESA/EFTA Court Agreement.

The EEA Agreement does not deal with conflicts between Member States of the European Union. If a conflict concerning the interpretation and application of EEA rules arose between these Member States, it would be settled through internal Community procedures and, in the last instance, by the CJEC puruant to Article 170 of the EC Treaty.

Article 36 of the ESA/EFTA Court Agreement concerning the action to annul decisions of the EFTA Surveillance Authority has Articles 173 and 174(1) of the EC Treaty as its models. However, Article 36 limits the review to decisions of the EFTA Surveillance Authority whereas Article 173 of the EC Treaty also covers legislative acts such as regulations and directives.

In this context, it is important to bear in mind that the EEA Agreement is a public international law agreement and that the EEA Agreement, according to Protocol 35^3 of the EEA Agreement, implies no transfer of legislative power from the Contracting Parties to any institution or organ in EFTA, the European Union or the EEA.

Before describing the advisory opinions, it should be mentioned that Article 107 of the EEA Agreement provides the possibility for an EFTA State to allow a court or tribunal to ask the CJEC to decide upon the interpretation of an EEA rule. Protocol 34 of the EEA Agreement contains further details on this matter. Each EFTA State is entirely free to decide whether to avail itself of this possibility. None of the EFTA States has made use of the option. It would cause political and constitutional difficulties to allow a court (CJEC) of a territorial entity to which none of the EFTA States belong to give binding interpretations.

The EFTA States have instead chosen to entrust the EFTA Court with a corresponding competence to give advisory opinions in light of the need for and importance of the existence of a procedure similar to the preliminary rulings. It was not possible to go further than to give the EFTA Court the competence to deliver advisory (non-binding) opinions. The function of the CJEC as conceived in the EC Treaty is that of a court whose decisions are binding.

The legal basis for the advisory opinions can be found in Article 34 of the ESA/EFTA Court Agreement and provides for the possibility of national courts and tribunals of the EFTA States requesting advisory opinions on the interpretation of the EEA Agreement. The EFTA States can in their internal legislation limit the right to make such a request to courts and tribunals against whose decisions there is no judicial remedy under national law. Such a limitation does not exist under the preliminary rulings procedure in the European Union. Only Austria has made a limitation in the right to make a request.

The procedure also differs from the preliminary rulings under the EC Treaty in other respects. There is no obligation to seek an advisory opinion, whereas the national courts and tribunals in the European Union against whose decisions there is no judicial remedy under national law must bring the matter before the CJEC according to Article 177 (3) of the EC Treaty. An advisory opinion may only be sought on the interpretation of the EEA Agreement and not on the validity of the decisions of the bodies established on the basis of the EEA Agreement.

Taking into account the complexity of the EEA legal system and the experiences in the European Union there is no doubt that this procedure will be of utmost importance for the

Contracting Parties' ambition to ensure a uniform interpretation and application of the EEA Agreement. The governments of the EFTA States expect that their national courts will make use of the possibility very early on to ask the EFTA Court to give advisory opinions.

The Relationship Between the EFTA Cort and the CJEC

It must be emphasized that there is no mechanism for direct cooperation between the CJEC and the EFTA Court regarding the assessment of individual cases brought before one of these courts. The two Courts are independent of each other. Such a mechanism would have been incompatible with Community law according to the CJEC in Opinion 1/91.[4] Instead there is a considerable number of rules and mechanisms which aim at ensuring a homogenous development of the jurisprudence of the EEA.

In Article 6 of the EEA Agreement, the Contracting Parties have declared that all provisions of the Agreement, in so far as they are identical in substance to corresponding EC rules, are in their implementation and application to be interpreted in conformity with the relevant rulings of the CJEC given prior to the date on which the Agreement was signed.

Article 3 (2) of the ESA/EFTA Court Agreement is relevant for the case-law of the CJEC after the signing of the EEA Agreement and obliges the EFTA Court to give due consideration to the principles laid down by the rulings of the CJEC made after the Agreement was signed, and which concern the interpretation of the EEA Agreement or such rules of Community law which are identical in substance to the EEA Agreement, the provisions of Protocol 1 to 4 to the ESA/EFTA Court Agreement and the provisions of the acts corresponding to those listed in Annexes I and II of the ESA/EFTA Court Agreement.

The fifteenth consideration of the Preamble to the EEA Agreement clearly stresses the intention of the Contracting Parties to arrive at and maintain a uniform application and interpretation of the Agreement.

Article 106 of the EEA Agreement provides that a system of exchange of information concerning judgments by the EFTA Court, the CJEC and its first instance (Court of First Instance of the European Communities) and the courts of last instance of the EFTA States is to be established.

Furthermore, the EEA Joint Committee is obliged, according to Article 105 of the EEA Agreement, to keep the development of the case-law of the CJEC and the EFTA Court under constant review and is to act to preserve the homogenous interpretation of the Agreement. Protocol 48 to the EEA Agreement provides that the decisions taken by the EEA Joint Committee under Articles 105 and 111 may not affect the case-law of the CJEC. This provision was originally an agreed minute but was transferred to the Protocol to avoid any doubt.

According to Article 111 of the EEA Agreement, the Contracting Parties can agree to request the CJEC for a ruling on a dispute concerning rules which are identical in substance to Community law.

Conclusion

There are far-reaching similarities in the organization and competences of the CJEC and the EFTA Court. The EFTA Court has as far as possible been given the same competences as the CJEC, in order to secure the homogenous application of the EEA Agreement. The success or failure of the EEA cooperation will to a large extent depend on the effective functioning of the EFTA Court and smooth cooperation between the EFTA Court and the CJEC. n

1. All views expressed are strictly personal. Special thanks are due to Martin Johansson, Legal Secretary at the EFTA Court, for his comments.

2. For a thorough and clear description of the EFTA Court, the following publication can be recommended: Norberg, Sven, The European Economic Area: Institutional Solutions for Ensuring a Dynamic and Homogenous EEA' in Vassili Christianos and Steen Treumer (eds.) *Competition Law of the EEA*' (to be published by the European Institute of Public Administration, Maastricht, 1994). Judge Sven Norberg was Director of Legal Affairs, EFTA Secretariat, from 1982 until the entry into force of the EEA Agreement.

3. Mr Advocate-General Walter van Gerven, CJEC, doubts whether the legal assessment in Protocol 35 of the EEA Agreement is entirely correct. For further details on this issue and for van Gerven's highly interesting point of view on primacy and direct effect of EEA law, see Walter van Gerven, The Genesis of EEA Law and the Principles of Primacy and Direct Effect' in *Fordham International Law Journal* (Vol 16, 1992-93, 955).

4. Opinion 1/91 [1991] *ECR* I-6079.

La transparence et l'information européenne

Veerle Deckmyn
Responsable de la bibliothèque et des publications
Institut européen d'administration publique

On reproche souvent à la Communauté européenne le manque de transparence de son fonctionnement vis-à-vis du monde extérieur et l'inadéquation de sa politique d'information.

En réalité, la Communauté, et plus particulièrement la Commission européenne, est bel et bien dotée d'une politique d'information, même si celle-ci peut certainement être améliorée. D'autre part, il incombe aux citoyens de faire un meilleur usage des canaux d'information qui s'offrent à eux.

Avant d'examiner de plus près les initiatives post-Maastricht, nous passerons d'abord en revue les structures d'information de la Communauté européenne.

1. En premier lieu, les **Bureaux d'information nationaux de la Commission européenne et du Parlement européen** qui se trouvent dans chaque Etat membre (généralement dans la capitale du pays) et également dans un certain nombre d'autres pays. Leur tâche originale était essentiellement celle d'une agence de presse, mais leur travail s'est progressivement élargi. Les Bureaux d'information informent le public des activités de la Commission ou du Parlement, fournissent une information spécifique sur demande et peuvent renvoyer des requêtes plus difficiles à un autre organe comme les Centres de documentation européenne (voir ci-dessous). La plupart des Bureaux d'information publient un Bulletin sur les affaires européennes, les asects politiques ou les activités de la Communauté, et accordent une attention particulière au pays dans lequel ils sont situés. Le Bureau national d'information de la Commission aux Pays-Bas est établi à La Haye et publie le bulletin d'information intitulé *"Europa van Morgen"*.

Selon le Commissaire européen chargé de l'information, M. De Deus Pinheiro,[1] il incombe aussi à ces bureaux d'informer la Commission européenne des besoins et des attentes de l'opinion publique pour qu'il puisse en être tenu compte lors de l'élaboration des propositions de politique.

2. En outre, depuis quelque temps déjà, la Commission européenne met en place des **Centres de documentation européenne** (CDE) qui, contrairement aux Bureaux d'information, ne sont pas gérés par la Commission elle-même, mais par des institutions existantes, généralement des universités, dispensant un enseignement et effectuant de la recherche sur l'intégration européenne. Les institutions auprès desquelles la Commission a établi un CDE reçoivent toutes les publications officielles des Communautés dans la langue du pays concerné. Ainsi, les scientifiques peuvent-ils trouver rapidement et facilement les documents dont ils ont besoin pour leur recherche ou travail didactique. Toutefois, les CDE n'ont pas pour seul objectif de stimuler l'enseignement et la recherche scientifique. Les universités ou autres institutions dotées d'un CDE doivent mettre leurs collections à la disposition du public. Toute personne intéressée par un quelconque aspect d'une politique communautaire doit pouvoir consulter les documents dont elle a besoin. La documentation européenne est généralement placée dans une bibliothèque, mais elle doit être gardée dans une section séparée et ne peut donc pas être classée parmi d'autres livres ou documents de la bibliothèque.

3. Mis à part les CDE, la Commission a également créé des centres de documentation plus spécifiques, tels que les **Centres de références sur les Communautés européennes** (petites collections souvent rattachées à des bibliothèques publiques) et les **Bibliothèques dépositaires** pour les universités ou institutions qui ont besoin uniquement d'une collection de base. Enfin, les **Euro-Info-Centres** sont destinés essentiellement au monde des affaires et leur principal objectif est de fournir aux (petites et moyennes) entreprises une information pratique

sur leurs droits et obligations européens ainsi que de se faire l'écho auprès de la Commission des préoccupations et initiatives de ces entreprises.

4. L'**Office des publications officielles** publie les documents des institutions communautaires et stimule leur distribution à travers un réseau de bureaux de vente nationaux dans tous les Etats membres et dans certains pays tiers. Depuis peu, l'Office publie un bulletin trimestriel appelé **EUROP News**[2] qui est distribué gratuitement et offre aux lecteurs une information récente tout en les tenant au courant des nouvelles publications. Toutes les institutions communautaires sont couvertes dans ce bulletin, ce qui le rend particulièrement intéressant.

5. Chaque institution communautaire possède un **Service central d'information ou du porte-parole**. Ces services peuvent aider à trouver une information sur les activités de leur institution, en particulier lorsqu'il s'agit de documents très récents.

6. Les citoyens qui vivent près de Bruxelles ou de Luxembourg ont un avantage certain, non seulement en raison de leur proximité des institutions communautaires, mais aussi parce qu'ils peuvent faire usage des **Points d'information** récemment établis et très fréquentés.[3] Ces points d'information sont des "mgasins" situés centralement et fournissent gratuitement des informations et des brochures sur toutes sortes de domaines de politiques communautaires. Parmi les brochures les plus demandées, citons: Les Institutions de la Communauté européenne "L'ABC du droit communautaire"; "Dix leçons sur l'Europe"; "L'Union européenne", etc. Souvent, les brochures sont envoyées par la poste sur demande, à condition que le nombre requis ne soit pas trop grand.

Bien que les services susmentionnés fassent de leur mieux pour fournir aux citoyens une information sur l'intégration européenne, l'on s'est rendu compte lors des récentes controverses sur le Traité de Maastricht, et en particulier après les référendums en France et au Danemark, que les canaux d'information traditionnels ne suffisaient plus.

Le sentiment négatif à l'encontre du Traité de Maastricht qui a fait son apparition dans certains pays peut s'expliquer partiellement par l'inadéquation du flux d'information. Au cours des négociations, le volume des informations fournies était relativement limité; d'autre part, ces négociations étaient menées selon la règle d'une conférence diplomatique traditionnelle. Aucun document de négociation ne fut publié officiellement et les citoyens devaient se rabattre sur la presse spécialisée afin d'obtenir des informations sur la direction que les gouvernements étaient en train de prendre au cours de l'année de négociation 1991. Le texte du Traité lui-même était sans aucun doute un excellent exemple de la formulation diplomatique, mais aussi (pour cette même raison) il était inintelligible pour la plupart des citoyens ordinaires. C'est pourquoi, l'information abondante fournie par le gouvernement danois qui remit à chaque électeur une copie du texte du Traité au cours de la campagne précédant le référendum, eut probablement l'effet contraire à celui escompté.

Finalement, le Traité de Maastricht entra tout de même en vigueur, malgré l'atmosphère de crise qui entoura la ratification du texte du Traité dans les Etats membres. Cependant, un certain nombre de sujets qui firent surface en 1992 et 1993 ne peuvent désormais plus être ignorés. Il n'est plus possible que l'unification européenne soit un thème réservé à une petite élite politique comme c'était jadis le cas; dorénavant, ce sujet doit concerner tous les citoyens européens.

Le Traité de Maastricht contient quelques initiatives en vue d'une plus grande ouverture. Tout d'abord, le Traité prévoit l'institution d'un médiateur européen habilité à recevoir les plaintes émanant de tout citoyen de l'Union relatives à des cas de mauvaise administration dans l'action des institutions ou organes communautaires et, dans ce cadre, le médiateur peut demander l'accès à la documentation et à l'information internes sur ces institutions ou organes. A l'heure

actuelle, on ne peut pas encore dire quelle sera la portée de ce droit d'accès du médiateur; en outre, le premier médiateur européen doit encore être nommé.

Le médiateur est un organe supplémentaire à côté des institutions actuelles et il est là pour assister le citoyen lorsque celui-ci a des problèmes avec les institutions. Le concept de transparence qui émergea en 1992 et 1993 signifie autre chose, à savoir que les activités normales des institutions de prise de décisions (donc, en dehors des plaintes spécifiques relatives à des cas de mauvaise administration) doivent être le plus possible ouvertes et transparentes. Dans ce contexte, le Sommet de Maastricht se limita à une déclaration qui ne fait pas partie des dispositions contraignantes du traité t qui se lit comme suit: "La conférence estime que la transparence du processus décisionnel renforce le caractère démocratique des institutions, ainsi que la confiance du public envers l'administration. En conséquence, la conférence recommande que la Commission soumette au Conseil, au plus tard en 1993, un rapport sur des mesures visant à accroître l'accès du public à l'information dont disposent les institutions."

Dans cette déclaration, la transparence était encore une préoccupation mineure qu'il fallait élaborer davantage après l'entrée en vigueur du Traité sur l'Union européenne. Cependant, en 1992 et 1993, la transparence se transforma en une condition politique pour l'entrée en vigueur effective. Lors des deux Sommets européens "britanniques" - Birmingham et Edimbourg - dans la seconde moitié de 1992, les chefs d'Etat et de gouvernement européens insistèrent sur la nécessité d'une plus grande transparence. Il fallait montrer clairement aux citoyens les avantages de l'intégration européenne afin de sauver le Traité de Maastricht.

Cette campagne jeta un éclairage nouveau sur la mission confiée à la Commission en vertu de la déclaration de Maastricht. Au printemps 1993, la Commission rendit ses propositions publiques; le 5 mai 1993, la Commission soumit sa première communication aux autres institutions communautaires sur le problème spécifique de "l'accès du public aux documents des institutions",[4] et le 2 juin elle fit une deuxième communication de nature plus générale sur "La transparence dans la Communauté".[5] Les principaux points des propositions de la Commission peuvent être résumés comme suit:

- La Commission envisage de faire un plus grand usage des "Livres blancs" et des "Livres verts" afin de prendre le pouls des différents groupes d'intérêts avant d'élaborer des propositions formelles de législation européenne.

- Les documents de travail de la Commission (appelés les COM.DOC) seront inclus chaque semaine dans le Journal officiel afin que les propositions de législation de la Commission puissent être rendues publiques sur une plus grande échelle.

- Les DOC.SEC (documents de travail internes du Secrétariat général de la Commission qui ne sont pas accessibles au public) seront convertis plus souvent en DOC.COM et donc rendus accessibles.

- Tous les documents internes de la Commission seront fournis sur demande, ce qui signifie que la règle actuelle en la matière sera inversée, sauf lorsque cela est impossible pour des raisons de protection de la confidentialité ou de l'intérêt général.

- La législation européenne éparse sur un sujet donné doit être consolidée afin de faciliter l'accès à ces règles.

- La base de données CELEX (base de données juridiques qui contient toute la législation et la jurisprudence communautaires) pourrait être équipée d'un menu plus convivial que le menu actuel. L'Office des publications officielles élabore actuellement ces plans plus en détail.

La plupart de ces propositions peuvent être réalisées par la Commission elle-même. Cependant, une transparence accrue dans le processus décisionnel européen dépend aussi des autres institutions. La Commission a dès lors demandé au Parlement européen et au Conseil de prendre des mesures allant dans le même sens. Après quelques mois de négociations, cela a débouché sur une "Déclaration interinstitutinnelle sur la démocratie, la transparence et la subsidiarité".[6] Toutefois, cette déclaration ne contient pratiquement rien de concret et le Conseil en particulier fait preuve d'une très grande hésitation. Le Conseil a déclaré qu'il était disposé à discuter l'ouverture de ses réunions et comptes rendus afin de donner au public une meilleure vision du stade final du processus décisionnel européen. En fin de compte, cela n'a pas donné grand chose, si ce n'est une retransmission télévisée absurde et sans lendemain d'une réunion du Conseil. Pour l'heure, une publication systématique des comptes rendus et du comportement de vote lors des réunions du Conseil semble exclue. Dans les années à venir, le Conseil continuera également à fonctionner davantage comme une réunion diplomatique au cours de laquelle des compromis sont atteints à huis clos, que comme un "Sénat" de l'Union européenne dans lequel les opinions des Etats membres sont échangées en public.

Dans sa communication du 2 juin 1993, la Commission incluait aussi dans ses considérations sur la transparence du processus décisionnel le problème connexe mais néanmoins distinct des "relations avec le grand public". Ce dernier n'est pas tant rattaché au problème de l'ouverture dans le processus décisionnel démocratique qu'à la perception du processus d'intégration européenne dans l'opinion publique, qui est devenue peu favorable dans la période de l'après-Maastricht. En mars 1993, un comité consultatif institué par la Commission et dirigé par le membre belge du Parlement européen (et ancien membre de la Commission), M. Willy de Clercq, fit des propositions en vue d'une nouvelle "stratégie de communication"[7] qui était plutôt comparable à une campagne de relations publiques en bonne et due forme pour l'Europe et qui fut mal accueillie par la presse.[8] Pour l'instant, la Commission semble préférer faire un usage plus intensif et mieux ciblé des canaux d'information existants, décrits dans la première partie de cet article, plutôt que créer de nouvelles "machines de propagande" sur une large échelle.

Conclusion

Le Traité de Maastricht entra finalement en vigueur le 1er novembre 1993. A présent que les tensions sur la ratification du traité se sont apaisées, on pourrait également assister à un fléchissement de l'enthousiasme des institutions communautaires et des Etats membres pour lancer la transparence promise. Actuellement, cela ne semble cependant pas être le cas, du moins pas à la Commission. En 1994, le bulletin de l'Agence Europe fait encore régulièrement rapport des activités et propositions de la Commission dans ce domaine.[9] Le 8 février 1994, la Commission prit une décision officielle sur l'accès du public à ses documents,[10] suivie d'une communication expliquant cette décision.[11] Les propositions contenues dans les textes doivent maintenant être également suivies dans la pratique par les fonctionnaires de la Commission. En outre, un changement analogue dans les mentalités devrait également se produire dans les autres institutions communautaires. Par ailleurs, je crois qu'il est tout aussi important que les utilisateurs apprennent à utiliser les nouvelles facilités de fourniture d'information et à formuler leurs requêtes avec la plus grande précision possible.

---

[1] Agence Europe, 29 janvier 1994, nr. 6159, p. 13.

[2] EUR-OP News, disponible gratuitement et sur demande dans différentes langues. Rue Mercier, 2, L-2985 Luxembourg.

[3] Points d'information: Bruxelles: Rond-point Schuman 12, tél.: 32/2/2965555. Luxembourg: Librairie Brück, Grand Rue 22, tél.: 352/466256.

[4] Communication de la Commission au Conseil, au Parlement et au Comité économique et social, COM (93)191 du 5 mai 1993, Journal officiel des CE C 156/5 du 8 juin 1993.

[5] Communication de la Commission au Conseil, au Parlement et au Comité économique et social, COM (93)258 du 2 juin 1993, Journal officiel des CE C 166/4 du 17 juin 1993.

[6] Publiée dans Documents Agence Europe, nr. 1857, 4 novembre 1993.

[7] Rapport De Clercq, Reflection on Information and Communication Policy of the EC', rapport d'un groupe d'experts présidé par W. De Clercq, 1993.

[8] Voir par exemple NRC Handelsblad, 1er avril 1993, Voorstel Europese pr-campagne schiet zijn doel voorbij' (La proposition d'une campagne européenne de relations publiques rate sa cible).

[9] Agence Europe 1994: Nrs. 6159, 6165, 6168, 6172 et 6174.

[10] Décision de la Commission du 8 février 1994 sur l'accès du public aux documents de la Commission, JOCE L 46/58 du 18 février 1994.

[11] Communication de la Commission sur l'amélioration de l'accès aux documents, JOCE L 67/5 du 4 mars 1994.

The Right to Vote and Stand for Election to the European Parliament

Dr Epaminondas Marias
Senior Lecturer, EIPA

Introduction

The elections of the European Parliament will be held in June 1994; these elections are the first direct elections to be held in the framework of the European Union. For the first time the citizens of the Union residing in a Member State of which they are not nationals will have the right to vote and stand as candidates in those elections in the Member States in which they reside. Furthermore, the creation of political parties at supranational level will enable Union citizens to express freely their ideas and undertake political action.

Granting voting rights in the elections to the European Parliament to Union citizens who reside in another Member State tackles not only a theoretical problem but also a very practical one, as the number of Union citizens who have benefited from the freedom of movement and establishment provided for by the EEC Treaty are estimated at five million.

The number of resident non-nationals who are citizens of other Member States is approximately 1.3 million in Germany and France, 880,000 in the United Kingdom, 541,000 in Belgium, 240,000 in Spain, 163,000 in The Netherlands, 150,000 in Italy, 105,000 in Luxembourg, 62,000 in Ireland, 50,000 in Greece, 29,000 in Portugal and 27,000 in Denmark.[1] Approximately 1.2 million Italians, 840,000 Portuguese, 630,000 Irish, 470,000 Spaniards, 400,000 Britons, 360,000 Greeks, 300,00 French, 290,000 Germans, 240,000 Dutch, 130,000 Belgians, 40,000 Danes and 11,000 Luxemburgers are established outside their home Member States.

Before the Maastricht Treaty came into effect, residents who were nationals of other Member States could also vote in the Member States of residence only if they were residing in Belgium, Ireland and The Netherlands, subject to certain conditions. Furthermore, all Irish nationals and Commonwealth citizens have the right to vote in the United Kingdom. On the other hand, the right to stand as a candidate is reserved in ten Member States for nationals only. In Italy, nationals of other Member States may stand for election, even if they do not live in Italy, while the same applies in the United Kingdom to Irish nationals and Commonwealth citizens.

Historical Background

The political debate on granting voting rights to nationals of Member States who are residing in another Member State of the European Community traces its origins as far back as 1960 when the European Parliament proposed, in its draft convention on election by direct universal suffrage, that Member States should grant voting rights to their nationals living in another Member State. As this draft was not favourably received by the Council, the European Parliament backed down and replaced it in 1975 by a new draft which did not deal with the right to vote and stand for election of European citizens living in a Member State of which they were not nationals.

The Act concerning the election of the representatives of the European Parliament by direct universal suffrage, which was adopted by the Council in 1976, was based mainly on the latter 1975 European Parliament draft and did not foresee any voting rights in this respect either. In 1977, the European Parliament called upon the Member States to ensure that their nationals living in another Member State could exercise their right to vote in the direct elections of the European Parliament and urged them to agree on voting *in loco* by allowing their citizens to

vote in the country in which they were residing on the date of the elections to the European Parliament.

In 1982, the European Parliament adopted its draft act on certain provisions relating to a uniform electoral procedure for the elections to the European Parliament. To this extent, it proposed that Member States should grant their nationals the right to vote, irrespective of their place of residence, provided that this is in a Member State.

In 1988, the Parliament urged the Community to adopt measures providing nationals of any Member State with the right to stand for election to the European Parliament in each and every Member State.

The Intergovernmental Conference on Political Union

The debate on voting rights in the elections to the European Parliament was continued in the framework of the Intergovernmental Conference on Political Union. With respect to the problem of the democratic deficit in the Cmmunity, the Belgian Memorandum on Political Union stated that the European Parliament should be encouraged to draw up a uniform procedure for the European elections, which could enable all Community citizens living in the Community to take part in the elections whatever their nationality.

Responding to the dialogue on Political Union, the Greek Memorandum emphasized that a People's Europe with a common legal system was expected to strengthen its citizens' feeling of belonging to one legal community aimed at the harmonious development of their potential. To this end, the Greek Memorandum urged for recognition by the Treaty of the concepts of European citizen and basic human rights. Accordingly, citizens living in another Member State should gradually be granted the right to vote in elections to the European Parliament in conjunction with the adoption of a uniform electoral procedure.

In its Resolution of 11 July 1990 on the Intergovernmental Conference, the European Parliament called for provisions to be incorporated into the Treaties providing for the development of common forms of European citizenship through measures such as voting rights for Community citizens in European elections in the Member States of residence.

On 24 September 1990, the Spanish Delegation issued its note entitled The Road to European Citizenship', stating *inter alia* that in the case of political participation in elections to the European Parliament, this right would have to involve two processes: on the one hand, adoption of a uniform electoral procedure throughout the Community as indicated in Article 138(3) of the EEC Treaty and, on the other hand, gradual recognition of the right of all citizens to vote in their place of residence.

Expressing its views on political union, the Portuguese Delegation paid much attention to European citizenship and attached particular importance to the free movement of persons without hindrance, the right to abode for all Community citizens and the right to participate in European elections.

On 14 and 15 December 1990, the European Council was held in Rome. It expressed its satisfaction on the consensus reached among Member States that the concept of European citizenship should be examined. It therefore asked the Intergovernmental Conference to consider the extent to which civic rights, such as participation in elections to the European Parliament in the country of residence, could be enshrined in the Treaty.

Following this European Council decision, the Spanish Delegation presented its proposal on European citizenship. Article 7 of the Spanish draft text on European citizenship provided that

every citizen should have the right to take part in the political life of the place where he lives and, in particular, the right to vote and stand for local elections and the elections to the European Parliament.

Article X5 of the Commission draft text on Union Citizenship also envisaged that any Union citizen will have the right to vote and stand as a candidate at municipal elections and European elections held in the place in which he has habitually resided for a certain number of years, albeit not specified exactly in the draft, without prejudice to the option of exercising those rights, if he so wishes, in the Member State of which he is a national, providing he enjoys them under national law.

On the bases of these proposals, the Luxembourg Presidency incorporated provisions on Union Citizenship in Articles A, B, C, D, E and F of the draft Treaty on European Union. Voting rights for the elections to the European Parliament were provided for in Article C(2), which later became Article 8b(2) of the EC Treaty. Article 8b(2) of the EC Treaty provides that: Without prejudice to Article 138(3) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1993 by the Council, acting unanimously n a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.'

The Council Directive

Aims and Scope

On 6 December 1993, the Council issued Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.[2]

The Directive is based on the following policy options:

- minimum rules, avoiding any harmonization of national electoral systems;

- non-discrimination between nationals and non-nationals;

- free choice by the citizen of the place in which he wishes to vote or to stand as a candidate;

- no one to vote twice or stand as a candidate in two places;

- mutual recognition of rules on disqualification.

The aim of the Directive is to implement Article 8b(2) of the EC Treaty and to ensure the effective exercise of the Union's fundamental right to vote and stand as a candidate in elections to the European Parliament. To this extent, it strengthens the democratic legitimacy of the European Parliament and contributes to reducing the democratic deficit in the Union. On the other hand, it is very clear that the Directive is not aimed at harmonizing the electoral laws of the Member States and, in this respect, it does not cover the right to vote of Union citizens residing in their home Member States, the right to vote of Union citizens wishing to vote in a Member State which is neither that of origin nor that of residence, etc.

Moreover, pursuant to Article 1(2) of the Directive, this Directive does not affect each Member State's provisions concerning the right to vote or to stand as a candidate of its nationals who reside outside its electoral territory. This provision is very important as all Member States, with the exception of Ireland, have adopted laws entitling their nationals living abroad to vote. Yet the solutions pursued by national laws are far from being uniform. While Denmark, The Netherlands and Portugal grant such voting rights only to those of their expatriate nationals who are living in another Member State, Belgium, Greece, Spain, France, Italy and Luxembourg continue to allow their nationals to vote in the elections to the European Parliament even if they are living outside the Community.

It follows from the Preamble to the Directive that it takes into account the principle of proportionality set out in Article 3b(3) of the EC Treaty and it does not go beyond what is necessary to achieve the objective of Article 8b(2) of the EC Treaty.

The Directive lays down the detailed arrangements whereby the citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote and stand as candidates there in elections to the European Parliament. Accordingly, any person who on the reference day is a citizen of the Union but not a national of the Member State of residence shall have the right to vote and stand for election in the elections to the European Parliament in the Member State of residence, provided he satisfies the same conditions with respect to these rights as that State imposes by law on its own nationals, and under the condition that he has not been deprived of those rights pursuant to Articls 6 and 7 of the Directive. This principle of non-discrimination between nationals and non-nationals is further safeguarded by the provision that where, in order to stand as a candidate, nationals of the Member States of residence must have been nationals for a certain minimum period, as in the case of Germany, citizens of the Union shall be deemed to have met this condition when they have been nationals of a Member State for the same period.

It is clear from Article 1 of the Directive that two principles are laid down:

1. the requirement of citizenship of the Union, and

2. the requirement of residence.

Citizenship of the Union

The concept of citizenship is clarified by the Treaty on European Union. According to Article 8 of the EC Treaty, every person holding the nationality of a Member State shall be a citizen of the Union. As opposed to the United States' citizenship, European citizenship is contingent upon having the nationality of a Member State. According to Article XIV of the United States Constitution, all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.

In the framework of the European Union, the case is just the opposite. No one can acquire European citizenship if he lacks the nationality of a Member State.[3] The right of states to determine unilaterally who their nationals are is recognized by the 1930 Hague Convention on certain questions relating to nationality laws. This was confirmed in 1955 by the International Court of Justice in the Nottebohm case when it held *inter alia* that it was for every sovereign state to settle by its own legislation rules relating to the acquisition of its nationality, and that nationality was within the domestic jurisdiction of the states.[4] This solution was also followed within the context of the European Union by virtue of the Declaration on Nationality of a Member State', annexed to the Maastricht Treaty.

The current situation in the Union regarding the laws of Member States on nationality is far

from being uniform, although the Court of Justice of the European Communities paved the way towards the Communitarization' of nationality laws of Member States in its judgment of 7 July 1992, in the Micheletti case, in which it held *inter alia* that the competence of each Member State to define the conditions of acquiring and losing nationality must be exercised with due respect to Community law.[5]

Residence

Unlike the concept of Union citizenship, the concept of residence is not clarified in the Treaty on European Union. Furthermore, the Directive does not provide a uniform definition of residence.

In the absence of any alignment of the legislation of the Member States in this respect, leaving the concept of residence undefined, compliance with the principle of equal conditions for national voters and Community voters is achieved more effectively, according to the Commission, while any interference in this area with Member States' electoral systems is avoided.

The Directive also refrains from determining the voting age, although in all Member States it is currently 18 years, and the minium age for standing as a candidate, which varies between 18 and 25 years in the framework of the Union.

Voting Rights

Article 4 of the Directive provides that Community voters can exercise the right to vote in the elections to the European Parliament, either in the Member State of residence or in their home Member State, introducing simultaneously the principle of a single vote and a single candidature'. As elections to the European Parliament are intended to produce a single Community institution, no person may vote more than once in the same election or may stand as a candidate in more than one Member State in the same election.

Article 5 of the Directive provides that if, in order to vote or stand as candidates, nationals of the Member State of residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States, including their home Member State.

Ineligibility and Disqualification from Voting

Ineligibility to stand as a candidate is dealt with in Article 6 of the Directive. It mainly concerns the state of a Union citizen who has been legally barred from standing as a candidate in elections. Disqualification from standing as a candidate is well known in the laws of the Member States, though the situation is far from being uniform. In certain Member States, criminal convictions can lead to disqualification. Such is the case *inter alia* in Belgium, Greece or Germany.

According to the European Parliament the preservation of its reputation makes the provision of certain conditions of ineligibility indispensable. Accordingly, the Directive employs two principles:

1. The extra-territorial effect of disqualification, and

2. The principle of concurrent application of disqualification.

In the framework of the Community, court decisions of the home Member State disqualifying persons from standing as candidates under civil or criminal law of this Member State are not normally enforceable. Employing the principle of extra-territorial effect of electoral disqualification, Article 6 of the Directive provides that any citizen who resides in a Member State of which he is not a national who, through an individual criminal law or civil law decision, has been deprived of his right to stand as a candidate under the law of his home Member State, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament. The same applies in the case of deprivation of his right to stand as a candidate under the law of the Member Sate of residence due to an individual criminal or civil law decision of this Member State. The Directive also employs the principle of concurrent application of disqualification by providing that both sets of rules are to be applied concurrently.

As the risk of Parliament's reputation being undermined is much smaller in the case of disqualification from voting, the Directive has pursued a more flexible approach. To this extent, Article 7 provides that it lies within the discretion of the Member State of residence to check whether the citizens of the Union who have expressed a desire to exercise their right to vote there, have not been deprived of that right in the home Member State through an individual civil law or criminal law decision.

Applying the principle of freedom of choice, Article 8 of the Directive provides that a Community voter exercises the right to vote in the Member State of residence only if he has expressed the wish to do so. In this respect, if voting is compulsory in the Member State of residence, Community voters who have expressed the wish to do so shall be obliged to vote. Community voters wishing to vote in the Member State of residence must be entered on the electoral roll sufficiently in advance of polling day.

Derogations

Lastly, the Directive provides for two sets of derogations. Though not expressly mentioned, derogations concern, on the one hand, UK citizens living in Ireland and Irish citizens living in Britain and, on the other hand, a certain small Member State of the Union where non-national citizens of the Union of voting age form an extremely high proportion (29%) of the total potential electorate.

In the first case, UK and Irish citizens will not be subject to the formalities applying to other Union citizens eligible to vote or stand as candidates for the elections to the European Parliament in the UK or Ireland respectively, as they already enjoy such rights. In the second case, the situation appears more complex. It is obvious that the Treaty on European Union has paved the way for the introduction of certain derogations. Article 8(2) of the EC Treaty provides that Community legislation implementing its provisions may provide for derogations where warranted by problems specific to a Member State. Such specific problems may arise, according to the Directive, in a Member State in which the proportion of citizens of the Union of voting age, who reside in this State but are not nationals, form more than 20% of the total electorate.

Accordingly, Article 14 of the Directive provides that, in this respect, the Member State concerned may by way of derogation from Articles 3, 9 and 10 of the Directive:

1. restrict the right to vote to Community voters who have resided in that Member State for a minimum period which may not exceed five years;

2. restrict the right to stand as candidates to Community nationals entitled to stand as candidates who have resided in that Member State for a minimum period which may not exceed 10 years.

These derogations are without prejudice to appropriate measures which the Member State concerned may take with regard to the composition of lists of candidates and which are intended in particular to encourage the integration of non-national citizens of the Union. The latter provision of Article 14 was justified by the Directive as an attempt to avoid any polarization between lists of national and non-national candidates.

When the European Parliament was consulted on the Directive pursuant to Article 8(2) of the EC Treaty, it expressed its disagreement both on the issue of the composition of lists of canddates and on the derogation to the right to vote and proposed that the relevant subparagraphs be deleted from the text of the Directive. According to the Parliament, any limitations on the rights of citizens to stand for election necessarily call into question a fundamental freedom, and not merely an electoral procedural rule.

According to Article 17 of the Directive, Member States are obliged to adopt laws, regulations and administrative procedures necessary to comply with this Directive not later than 1 February 1994.

Apart from any shortcomings, especially regarding the derogations of Article 14, the application of the Directive marks a new stage in the creation of a Union of peoples based on solidarity, cohesion, social justice and active political participation.

---

1. See Eurostat population statistics, 1992.

2. *OJ* L 329/30-12-1993, 34-38.

3. On this issue see Epaminondas Marias, From Market Citizen to Union Citizen', in Epaminondas Marias (ed.): *European Citizenship*, EIPA, Maastricht, forthcoming.

4. *ICJ Reports*, 1955, 4.

5. *Recueil* [1992] I-4239.

The US and Europe in a Changing World

Martin Wolf*
Journalist, Financial Times.

Post Cold-War World

It has become increasingly obvious that 1989, the year communism collapsed, marked a watershed in world history. But it was not a watershed between an age of conflict, on the one hand, and an era of harmony and peace, on the other. The new age is as doubtful and dangerous as the old one, just different. It is one that will require not less, but more constructive cooperation between Europe and North America than before.

There are some who look back on the Cold War with nostalgia. It was cruel, they feel, but at least it was stable. I understand that view, but I also reject it utterly. The Cold War was the last and longest stage in an ideological conflict, born in the nineteenth century, between liberal democracy and totalitarianism.

No decent peson should regret the latter's defeat. Nobody familiar with the anti-human degradation of life in the former Soviet bloc can feel anything but delight in its collapse. Since communism was a graveyard for civilised values, building something new out of its rubble will be hugely difficult. Sometimes the effort will fail, as it has done so horribly in the former Yugoslavia. But our goal must be to help manage this transition, not lament its necessity.

The new age should be welcomed. But its difficulties are also becoming ever more obvious.

Consider, first, just how much has changed in the political arena.

- Socialism has lost its credibility everywhere, while, paradoxically, conservative parties have also been deprived of their appeal as bulwarks against communism.

- Italy and Japan, both post-fascist, clientelist democracies, are now in disarray.

- Germany is struggling to make one nation out of the two created at the end of the Second World War.

- The European Union is called upon to embrace all of Europe, even though it has proved unable to agree on its own internal structure and ultimate aims.

- The United States has become increasingly obsessed with its internal economic and social difficulties.

- The purpose, functions and membership of NATO are in question, while defence establishments, not to mention defence industries, are being drastically slimmed down.

- More broadly still, there is unparalleled scepticism about the capacity of democratic politics and conventional politicians to make a difference to the lives of citizens of societies experiencing shattering social and economic change.

Consider, second, the economic background to these political upheavals.

- The virtually universal collapse of capital controls and the rise of the multinational corporation has integrated the global economy to a degree not seen since before the First World War and, arguably, not even then.

- More than 60 developing and former communist states have engaged in unilateral trade liberalisation since the start of the Uruguay Round in 1986.

- In recent years, emerging markets have been the most profitable location for portfolio investment.

- The Asia-Pacific Region looks set to become the world's largest region, measured by economic output, during the first decade of the next century.

- China is emerging as a great economic power, paralleling in its potential impact the rise of the United States in the late nineteenth century.

- Structural unemployment, notably in Europe, and declining relative pay of unskilled labour, notably in the United States, threatens the social stability of the industrialised countries.

- Trade conflicts, notably between the United States and Japan, threaten the credibility of the multilateral trading system.

- Protectionist sentiment, particularly *vis-à-vis* emerging economies, is on the rise in the old industrial countries, often in the guise of harmonising social or environmental standards.

The question that I wish to address is how we in the West should cope with these upheavals. The outline of what we need to do seems obvious.

- The West must sustain its mutual cooperation.

- It must try to accommodate new powers, such as China, within the framework of the liberal global market economy that the West itself created.

- And it must adjust to the social and economic changes imposed upon it.

Back to the Future

The most obvious danger is a return to the rivalries that disfigured the pre-1914 world.

For the first time since the beginning of the century, the world's major powers are not in a state of conflict with one another, be it arms race or actual war. But what we have now is, at least potentially, a world of viciously competing capitalist powers. That was the world that produced Lenin's critique of imperialism. It was also the world that found its ultimate doom in the First World War.

This is a world without deep ideological conflicts. It is a world without an arms race. It is a world in which economic relations will be primary. They have, in fact, always been primary: mistaken economic policies helped lead to the Second World War; wise economic policies led to Western victory in the Cold War. GATT may be nothing like as sexy as NATO, but it has played at least as great a role. But now the primacy of economics is evident. Market-oriented democracies care about economics, because their electorates do.

The danger is that introspection, suspicion and even hostility amongst those who lie at the heart of the world economy - principally, the US and Europe, but also, of course, Japan - will cause disaster. If so, it would be the return of economic nationalism in its mercantilist guise that would be the proximate cause.

Dangers of Narrow Economic Nationalism

Nationalism is a European value. One might suggest that it is *the* European value, certainly as much so as individual freedom and democracy, both of them relative newcomers in large parts of Europe. Nationalism has been at least as powerful a force in the last five centuries of Western history as love of freedom, while the nation state itself is a European invention.

Nationalism is the legacy that the European Community is trying to transcend, but is it only to create a wider European nationalism? A federal Europe, if that should come to pass, could be just as nationalistic' as ethnically or linguistically homogeneous states. It might be more so, since the greater the internal lack of homogeneity and the more feeble the central power, the greater the temptation to reinforce feelings of mutual solidarity by exaggerating differences with outsiders. The US itself has, after all, managed to be nationalistic', even though it is no nation. The world of today, one in which economics has gained primacy, could still be a nationalistic world. And a misguided economic nationalism could bring ruin on us all.

Economic nationalism involves a view both of ends and of means. The obvious end is pleasure taken in the knowledge that one's own country is amongst the wealthiest. Economic nationalists sometimes believe that it would be better for their country to be less well off, if only others were still poorer. Often this is because the aim of economic life is taken to be not prosperity, but national power.

If the overall wealth of their country were their sole concern, nationalists might be Manchester School free traders. But when economic life is viewed either as a struggle for - or a source of - power, economic life is itself usually seen a zero-sum game. Economic activity is, it is then felt, war by peaceful means. Nations compete for scarce markets, while a wise nation keeps its' markets for its' producers.

These notions are misguided. Power is, indeed, a zero-sum game, because it is about relative positions. If someone else's power increases, those of others decline. But prosperity is a positive-sum game. Everyone can have more. If someone grows richer, the opportunities of others also increase.

The question is this: through what type of nationalistic lens will international economic relations be seen? Will it be through the benign lens of nineteenth century international economic liberalism, or will it be through the suspicious eye of eighteen century mercantilism? Will Europe and America come to regard internatinal economic relations as, in the present day jargon, a positive sum' or as a zero sum' game?

Benefits of Positive Internationalism

The alternative to the narrow mercantilism that drives the United States in its current disputes with Japan - probably the first example of the pre-1914 world into which we could easily relapse - is a positive internationalism. Its basis would be the fundamental idea that maintenance of the global market economy and the institutions that underpin it is in the higher national interest of us all.

The end of the Cold War has, in fact, brought the opportunity to create a liberal and cooperative international economic order, embracing much of mankind. This is also what much of mankind desires.

But it will not happen if the United States and Europe do not cooperate to that end. At present their economies still account for close to half of global economic output at market exchange rates. They are the world's main import markets. As the end of the Uruguay Round showed, these two giants - which I call the trading empires' - are decisive in determining whether or not the framework of global cooperation will be sustained.

Sustaining cooperation will be made difficult by the absence of a shared strategic enemy. It will now be far easier to let lobbying by sectional interests, such as French farmers, or irritation over extraneous conflicts, such as that over policy towards Bosnia, destroy cooperation. For some time, that seemed to be the likely fate of the Uruguay Round. It took a heroic effort to snatch victory from the jaws of defeat and even that victory does not end the matter. The battle goes on.

Adjustment to the New Arrivals

Suppose the West were indeed to sustain its cooperation. The question then would be cooperation for what. It is evident that Europe and North America share far more than divides them: an alliance; a predominantly European culture; political democracy; a high level of economic development; ageing populations; and growing burdens of welfare spending. One possibility would be for the West to cooperate to keep the new powers down.

Some voices in the West - Jimmy Goldsmith, the billionaire entrepreneur, being notable amongst them - recommend precisely this kind of cooperation. Let the advanced countries trade with one another, but protect themselves ruthlessly against the economically advancing hordes of the developing (no longer Third) world.

This would be an understandable reaction. But it would be an utterly mistaken one. Yes, with only 15 per cent of the world's population, the advanced industrial economies are doomed to relative decline; but no, we would gain little and lose much by trying to halt the advance of the newly emerging economies.

The aim must be to encourage them to become as like us as possible. Despite all the talk about a uniquely Asian, authoritarian way to development, the evidence suggests that countries become more democratic as they become richer, as has already been the case in South Korea and Taiwan. If, in the process, they manage also to sustain the positive features of their cultures, notably the central role played by family obligations, then we in the West would also have something to learn from them.

Why would efforts at exclusion be such a mistake?

- First, because it will not work, any more than ritish efforts to stop export of textile manufacturing technology to the United States worked. If a country like China harnesses the entrepreneurial talent of its people, nothing we do, short of nuclear war, will stop them.

- Second, because the more hostile and protectionist we are towards them, the more hostile they will become both to us and our values. Political conditionality may be detested only by tyrannical elites. Protectionism will infuriate entire peoples. At worst, it would create the self-fulfilling prophecy of hostile trading blocs.

- Third, because economic development of poor countries will create huge economic opportunities.

- Fourth, because protectionism would make us collectively poorer as resources are shifted from competitive export industries to less competitive import-competing ones.

Tackling our Internal Failings

Yet if the West is to manage its engagement with a rapidly changing world economy in a positive way, it must also address its own internal failings. For it is beginning to become increasingly clear that both the post-Second World War welfare states of Europe and the post-

New Deal version of the American dream in the United States, are in crisis. The former is becoming unaffordable, while the second is becoming unavailable.

There are no easy answers. The shared problem seems to be the way in which the march of technology, the rise of labour-intensive exports from developing countries and the breakdown of the family have conspired to produce a growing number of unemployed and unemployable men. This, in turn, has led to rising crime and, in a vicious circle, further disintegration of traditional family and social structures.

The peculiarly European problem is the cost of the welfare state, which has overwhelmed Sweden already, but threatens other European states as well. Unemployment and social breakdown are one of the causes - and consequences of the steadily rising pressure for increased social spending. Others are ageing and technical improvements in health technology. The challenge facing Europe is how to balance popular expectations for welfare support with taxable capacity, how to create higher employment, while sustaining the incomes of those out of work. This may prove impossible, with dire consequences for political stability.

The peculiarly American problem seems to be two decades of falling average real wages, stratospheric levels of crime and the sense of hopelessness about the future overwhelming many ordinary Americans, shown so clearly in the support for Ross Perot.

The Challenge Ahead

The market is global; the state is national. The tensions between the two are inescapable. But somehow they must be managed. Will they be? I do not know. Should we try to manage them by building on what we have created together? That I do know.

The post-cold-war world is one of great dangers and great opportunities. It is one in which Europe and North America will, together, also remain the most important players, at least for many years. But they must also co-opt others, Japan, notably, but in the longer term, China as well.

It will be hugely difficult. National rivalries are likely to grow. Economic adjustment is bound to become ever more painful. Political systems will be placed under great pressure. Crises will blow up, with no strategic need to sustain cooperation.

It will also be hugely important. As President Clinton has said, we must compete, not retreat'. Fortunately, we possess huge assets with which to do so, namely, our wealth, our skills, our technology and our political stability.

But we must do more than compete. We must also cooperate, with one another and with all those who would join the global economic system we have created. We owe it to the generation that follows us to bequeath the priceless asset of cooperation that we inherited from those that preceded us.

---

* Dinner speech delivered in Brussels on 10 March 1994, to the seminar Transatlantic Relations', organized by EIPA in cooperation with the Brookings Institution, Washington D.C.