



Focus

Eastern Enlargement of the EUI

The EUI, like the EU is going to admit several new Member States from Eastern Europe. Like the EU, we see this as an act of historic justice and great opportunity. In the field of research and education the Cold War division of Europe was particularly unfair and artificial. We now have a chance to undo this historical legacy and work together for the benefit of the entire Europe. Yet like the EU, we also face several challenges prompted by the forthcoming enlargement. Like the EU we are likely to embark on this huge enlargement process with only scarce additional financial resources. Like the EU we fear organizational chaos and institutional paralysis after enlargement. And like the EU we encounter problems in adjusting our mental maps to a Europe that is whole and free.

Let me start with this last problem. In recent years a lot of initiatives have been undertaken at the EUI to stimulate research on Eastern Europe. The Robert

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Schuman Center launched a series of special reports on various aspects of the EU's enlargement led by such fine Europeans as Giuliano Amato, Jean-Luc Dehaene, Jacques Delors, Horst-Gunter Krenzler and Wim Kok. Individual departments started to recruit Ph.D. researchers from Eastern Europe or working on this region.

The list of workshops and seminars on history, economics, law and politics of Eastern Europe organized at the EUI is also long. And yet our mental maps seem still largely West-centered. More than a decade after the fall of the Berlin Wall our in-house

expertise on Eastern Europe remains very modest. Travel routes of our senior and junior colleagues are still primary in the direction of London, Paris or New York rather than Prague, Bucharest or Moscow. And if we take in Eastern European students we try to make sure that they have taken education in one of the familiar Western universities. This, one may say, is a typical center-periphery syndrom. However, when the Eastern enlargement of the EUI will finally take place we would be confronted with the mainstream of Eastern European academics that are not necessarily admirers of our type of research and I wonder whether we are not heading for a clash of civilizations.

Enlargement of the EUI will also create organizational and institutional problems. The High Council meetings will include several additional representatives from new Member States. How to maintain an efficient decision-making capacity within this ever-larger body? How much time will be needed for the new and old Member States to reach a workable synergy? And how will the growing



Polish President Aleksander Kwasniewski with EUI researchers on the occasion of his visit at the Institute on 28 February 2002



Jan Zielonka

discrepancy between financial contribution and decision-input be handled?

The Academic Council, and the EUI Administration will also be under pressure to accommodate more Eastern Europeans and none of them seems yet ready for that. And the influx of Eastern European students will only add to our current problems of space and resources. We know from the study of the European Union that widening does not necessarily preclude institutional deepening. Nevertheless, we should keep in mind that enlargement is taking place at the time of major institutional restructuring of the Institute initiated by the new President. These reforms are aimed at better quality of our teaching, research and administration. It would be a pity if these reforms were stalked because we suffocate by mounting and largely unanticipated pressures emerging from the eastern enlargement.

Resources is always a difficult issue especially in times of economic stagnation, but we cannot avoid this topic when preparing for enlargement. Of course, money can hardly represent a substitute for good policies. That said, it would be naïve to assume that the EUI enlargement could be successful without any additional resources. In the past, generous support of the Italian and Luxembourg Member States allowed us to recruit some Eastern European students. The Austrian government and the Academy of Finland sponsored research projects focussing on Eastern Europe. Those and other Member States could now make another and more substantial contribution in anticipation of the EUI eastern enlargement. Of course, the new Member States are also expected to contribute to the EUI budget. But for enlargement to succeed much more will be needed. I am especially puzzled by the fact, that the European Commission has not yet come forward with a serious financial package that would allow senior and junior researchers from Eastern Europe to engage more actively in the work of the EUI.

After reading this list of potential problems it might be tempting to conclude that we should wait for some years with enlargement. In my view, however, some of the problems emerge from the fact that we have waited with enlargement for such a long time. For instance, the College of Europe has created its successful site near Warsaw several years ago, while we at present have only two Eastern European countries as our associate members. Several leading European universities are also further than we are in embracing Eastern Europe. For the EUI enlargement is not only a matter of historical justice; it is also a matter of institutional survival. Failure to enlarge will undermine our European credentials and it will weaken our competitive position on the academic market. Therefore I am strongly in favor of this enlargement, but we must handle it with prudence.

JAN ZIELONKA

Professor in the Robert Schuman Centre



On Thursday 12 June, PAT COX, President of the European Parliament gave 24th Jean Monnet Lecture entitled: *The Challenges of the Enlarged Europe* (published at: <http://www.iue.it/PUB/JeanMonnetLectures.shtml>)

The Lecture followed a meeting of the High Council, which welcomed representatives of the 10 new Member States. To mark this special occasion the Polish-French artist Igor Mitoraj, who works in Pietrasanta let the Institute have the loan of his sculpture "Grande Toscano". The sculpture will be on show at the Badia Fiesolana until 15 October 2003.

Enlargement and Constitution-Making: too much of a Good Thing for one Union?

The European Union is heading towards becoming a constitutional entity and an enlarged community at about the same time. These two processes: constitutionalisation of the EU and its enlargement have long been at the centre of attention at the EUI, and the Institute has acquired a deserved status as a leading (the leading?) centre of research in both fields. Now is the time to take stock of how these two processes interact with each other.

No doubt, the simultaneous occurrence of constitutionalization and enlargement may be seen as the source of a big headache: how can one entity undergo two such gigantic transitions at the same time? Under the traditional (though largely discredited) antinomy of 'deepening' and 'widening' there would inevitably seem to be a negative answer. But this need not be the case; the occurrence of both these processes at the same time may be an occasion for synergies rather than tensions; for mutual reinforcement rather than contradictions. A good starting point is a realization that the parallel emergence of these issues is, of course, not a mere coincidence, but rather that the prospect of enlargement was a powerful reason for embarking on the constitutionalization process; as Bruno de Witte put it recently, enlargement was a constitutional agenda setter for the European Union. This becomes apparent from issues such as the reform of the main institutions of the Union: in order to make them more resilient on the eve of enlargement, the constitutional process centred on post-Laeken Convention was put in place. According to some characterisations, the constitutional process was a sort of defensive action aimed at making sure that the decentralizing forces expected to result from enlargement do not wreak havoc on the Union as a whole.

While this is not an unreasonable characterisation, I would like to identify more positive dimensions of these parallel developments. My more cheerful account suggests that the simultaneous moves towards a constitutionalized and enlarged Union create extra opportunities for the future of Europe. More specifically, the rules worked out during the dynamic process of admitting new members may feed back into the constitutional structure of the EU in ways which would have not been thought of (or which would have been politically less practicable) in the absence of enlargement. One such example is the way in which the rules on minority protection, coined as they were for the purpose of policing the internal behaviour of candidate states, may penetrate into the constitutional normativity of the EU as a whole, and thus become present in the policies of the EU. After all, although during the accession process the candidate states were scrutinized for their record in the field of minority rights, minority rights do not figure prominently (to put it mildly) in the rights documents of the Union, including the Charter of Fundamental Rights! If they are not forgotten once accession has occurred, and if they can loop back into the broader context of the EU, this would be one way in which the parallel pursuit of enlargement and of constitution-making may produce synergies which are beneficial for the better understanding and fine-tuning of constitutional rights within the EU's constitution.

This leads to a broader point regarding the role of values and norms in the construction of the EU's identity. Talk of values has, in EU constitutional discourse, often been either marginalized or turned into ritualistic platitudes. As, in particular, Frank Schimmelfennig (our former Jean Monnet Fellow)

has shown in his penetrating articles, norms and ideals have an enormous explanatory power with regard to the Enlargement process; the "decision to enlarge" may seem irrational unless viewed against the background of the foundational values and ideals of the Union (or, rather, its predecessors). In the fine formulation of Neil Walker, 'the very constitutional ideals that have facilitated the Enlargement process are also those which are crucial to the present policy-building phase of the EU in nurturing the sense of a common identity and of a community of attachment on which the legitimacy of the polity rests'.

In other words, if enlargement has been largely normatively (rather than merely pragmatically) driven, then this normativity creates an important resource for the construction of the European constitution. The extension of constitutional discourse in this way to more openly and directly reflect the fundamental values of the Union, and faithfulness to the norms which were long ago spelled out in the foundational documents of the EEC/EC/EU, are necessary if the constitution-making process is to have real purchase upon the public imagination. Not only in Brussels or Berlin – but also in Bratislava or Budapest...

WOJCIECH SADURSKI
Professor in the Law Department



Enlargement and European Constitutional Process

Joint conference of College of Europe-Natolin and EUI in Natolin, Warsaw

As part of the EUI-Natolin cooperation relations, the two institutions held a joint conference on 31 January - 1 February 2003 at the College of Europe campus in Natolin, Warsaw, to discuss the challenges of forthcoming EU enlargement and the European constitutional process. The conference brought together leading Polish scholars and EUI professors and fellows involved in research on enlargement and the EU Future Debate.

The EUI delegation was represented by Professors Helen Wallace, Jan Zielonka and Wojciech Sadurski; Miriam Aziz and Susan Millns (Marie Curie Fellows in the Robert Schuman Centre), Andrea Ott (Jean Monnet Fellow in Law) and Jaroslaw Lotarski (Marie Curie Fellow in the Law Department), and researchers Hervé Bribosia and Anneli Albi.

Generally speaking, the discussions were lively and thought-provoking, and stimulated a debate which provided both delegations with insights into the minutiae of the separate but linked processes of enlargement and constitutionalization in the EU.

A unique quality of the conference was that it provided the opportunity for academics and policy makers alike to gain an insiders' view of the Convention on the Future of Europe. Prof. Danuta Hübner, Polish



Professors Jacek Saryusz-Wolski, Giuliano Amato, and Helen Wallace

Minister for European Affairs and Government Representative at the Convention, opened the conference with an overview of the Polish positions in the Convention. Furthermore, the keynote speech was given



Prof. Danuta Hübner, Polish Minister for European Affairs and Government Representative at the Convention

by Prof. Giuliano Amato, the Vice-President of the Convention, who acquainted the participants with the Convention's state of play and the issues which will need to be addressed at the next IGC in further detail. On the first day, discussion focused on the simplification of the treaties. An excellent overview of the process and of the debates surrounding simplification was provided by Hervé Bribosia, whose involvement as a member of the European Commission Group of Policy Advisers as well as of the group at the EUI that proposed a Draft Basic Treaty mandated by the European Commission in 2000 placed him in an ideal position to comment in terms of both theory and practice.

This was followed by contributions from Prof. Stanisław Biernat, Chair of European Law at the Jagiellonian University, and Przemysław Saganek, Lecturer at the University of Warsaw, in a session chaired by Prof. Janusz Trzcіński, Government Representative to the Convention. All of them drew on the Polish debate on constitution-making in the EU as well as on Polish experience during the transition process.

The next session was devoted to questions of institutional design, with contributions by Prof. Helen Wallace, Director of the EUI Robert Schuman Centre, Rafał Trzaskowski, Research Fellow at the Natolin European Centre, and Jaroslaw Lotarski, Marie Curie Fellow in the EUI Law Department, on the institutional (im)balances which are in need of detailed re-



Prof. Genowefa Grabowska, Senator and Parliamentary Representative to the Convention, and EUI Fellows Miriam Aziz and Andrea Ott

flection. The session was chaired by Prof. Piotr Winczorek from the University of Warsaw.

The afternoon panel addressed the questions of sovereignty and national preferences, under the chair of Prof. Genowefa Grabowska, Senator and Parliamentary Representative to the Convention. Presentations were given by Prof. Jenő Czuczai, Vice-President of the European Law Academy in Budapest, Prof. Janusz Symonides, University of Warsaw, and EUI post-doctoral research fellows Dr Miriam Aziz and Dr Andrea Ott.

At the final session on the first day, the issues of legitimacy and referendums were addressed by Prof. Mirosława Marody, University of Warsaw, Prof. Edmund Wnuk-Lipinski, Collegium Civitas, Prof. Jan Zielonka, EUI, and Anneli Albi, Researcher in the EUI Law Department, under the chair of Krzysztof Bobinski, editor of *Unia & Polska*.

The second day focused on the Charter of Fundamental Rights. The session was chaired by Prof. Jerzy Makarczyk, former Judge of the European Court of Human Rights, and contributions were made by Prof. Mirosław Wyrzykowski, Dean of Law at the University of Warsaw and Judge of the Constitutional Tribunal, Prof. Anna Wyrozumska, University of Łódź, Prof. Wojciech Sadurski and Marie Curie Fellow Susan Millns from the EUI, and Prof. Alfred Kellermann, from the TMC Asser Institute.

The EUI delegation would like to warmly thank the Natolin team for its excellent organization and hospitality throughout the conference. For those less familiar, Natolin campus forms part of the College of Europe in Bruges and offers an interdisciplinary Masters' degree in European integration. Situated in a beautiful park close to Warsaw, it takes in approximately 120 graduate students a year, from both Western and Eastern Europe.

In April 2002, the European Centre Natolin and the EUI signed a cooperation agreement, which includes a mobility scheme between the two institutions. For the year 2003, the European Centre Natolin is willing to host professors and researchers for a period of up to three months, covering board and lodging and helping EUI visitors with establishing contacts in Poland. Information about Natolin can be obtained from its web page, www.natolin.edu.pl, or by e-mail from Marek Evison (e-mail mevison@natolin.edu.pl).

EUI conference delegation members MIRIAM AZIZ (Marie Curie Fellow in the Robert Schuman Centre) and ANNELI ALBI (4th year researcher in the Law Department, Estonia)



Miriam Aziz and Anneli Albi

Making a Success of Enlargement

A report on the enlargement of the EU by Wim Kok, former Prime Minister of the Netherlands, was published by EUI in March 2003. Written with the assistance of the Robert Schuman Centre for Advanced Studies, the report was requested by Romano Prodi (President of the European Commission) and Günter Verheugen (Commissioner for Enlargement). It aims to inform and accompany the public debate on the implications and challenges of extending the EU to 25 members.



Commissioner Günter Verheugen, Romano Prodi and Wim Kok

Entitled “Enlarging the European Union: Achievements and Challenges”, the 80-page report was submitted by Mr Kok personally to the 20 Commissioners at their meeting in Brussels on 26 March. He argues that enlargement needs a clear strategy to make it a success : by expanding its membership to 25 the EU can confront three major challenges - its economic performance, its internal cohesion, and its external role. But he warns “if the EU does not move ahead with the reforms and adjustments that enlargement now demands, it will miss the chance - perhaps for ever – to make Europe stronger and safer, in the interests of its citizens, its neighbours and the world.”

In preparing his report, Mr Kok was assisted by experts from many different countries and backgrounds (including students, fellows and professors of EUI) who met with him at three workshops at Villa Schifanoia in January and February of 2003. The rapporteur was Graham Avery of the Robert Schuman Centre, with the assistance of Wim Van Aken and Will Phelan, and the advice of Professor Helen Wallace and Professor Jan Zielonka.

In his report, Mr Kok expresses the conviction that “the benefits and opportunities of enlargement by far outweigh the potential obstacles, costs and risks.

It is the most successful act of foreign policy that the EU has ever made”.

The main benefit is the chance to achieve peace and stability on a pan-European scale. Stability and democracy in Central and Eastern Europe have already yielded great benefits for the peoples of the present EU. As well as greater security, they are enjoying prosperity enhanced by a rapid increase in trade, leading to more employment and more growth in Western Europe. The path to EU membership has not been easy for the countries of Central and Eastern European, says Mr Kok. They have undergone massive changes which have not benefited everyone equally. The real costs of enlargement are not measured by the EU budget, whose outlay for enlargement is modest. He adds that delay or abandonment of enlargement because of non-ratification by any of the EU members “would be a major political failure for Europe.”

Mr Kok’s report tries to answer the main questions that European citizens pose about enlargement. “Although the public’s general view of enlargement is positive, there is a widespread need for more information,” he says. The chapter on the European economy (employment, growth, finance, etc.) finds that:

The rapid increase of trade and investment in recent years between the EU and its future members has brought big economic gains. Accession, with the abolition of frontier controls for goods, will bring the new members fully into the market. Gains can also be expected from the liberalisation of services, capital and labour.

For existing members, it offers better economic prospects. The factors here include: equal terms of competition in the enlarged market; access to a workforce with good qualifications; higher demand resulting from growth in the new members.

For new members it offers the chance to catch up with the prosperity of Western Europe. The factors here include: more investment, in addition to the capital inflow of recent years, leading to further improvements in productivity, skills, and technology transfer; the stable legal and economic framework provided by EU membership; assistance from EU funds.

The chapter on the quality of life (security, standards of protection, etc.) finds that “by extending the EU we are not importing problems from them, but extending our ability to deliver solutions”. For example:

The future members have increased co-operation by their police and judges in enforcement of laws. International traffic in drugs and humans becomes easier to control as the countries of Central and Eastern Europe adopt common standards, monitored by other EU members. The protection of their frontiers with non-EU countries is improving.

As the future members conform to EU rules on pollution of air and water, their environment is becoming safer for their own citizens, and for those in adjoining countries. EU policy will help them to conserve their rich natural heritage of species and habitats.

The EU is bringing their nuclear plants up to higher levels of safety.

Mr Kok argues that enlargement requires Europeans to understand each other better, to identify common interests, and to combat the fear that a bigger EU could mean a loss of identity. "A sense of confidence in Europe is needed for us to act together to find European solutions. So we should do more to promote understanding between citizens, especially understanding of the new members: that means exchanges of people from different parts of society; work experience; study by younger people in other EU countries; and strengthening of European university networks".

He pleads for an effort of comprehension by old and new members alike. For the existing EU, the accent in the past was on the 'acquis' ? exhorting and advising the future members how to apply European rules. As they become full members and equal partners ? with rights as well as obligations ? the language of 'we' and 'you' must change to another mode: "we together" in the enlarged Union. For the new members, there will be important psychological changes, as they become 'decision-makers' instead of 'decision-takers'. Mr Kok adds "I consider that the new partners have more to do to complete their preparation for membership. But I also feel that they have much to teach us from their recent experience of political, economic and social reforms".

The report outlines five key areas for action by the EU to make a success of enlargement:

Acting Together in Europe

Treaty reforms that allow the extension of majority voting, the strengthening of the "Community method", and respect of the institutional balance.

Boosting the European economy

European and national economic policies that give a priority to growth and convergence – "these must be the keywords for the enlarged EU".

Member States should open up their borders to workers from the new members as soon as they can do so. Lifting restrictions will result in only a limited inflow of people seeking work.

Policy changes, including reforms of agricultural policy to help rather than hold back the flow of people out of agriculture in Central and Eastern Europe.

Structural spending adapted to the needs and priorities of the new members which include environment, infrastructure, human resources and education.

Making Europe safer for its citizens

The EU should make a leap forward in cooperation on justice and home affairs, and seize the opportunity offered by enlargement to improve the fight against international crime and to control immigration.

Developing partnerships with our neighbours in Europe

As the EU enlarges, we need to develop better forms of partnership with neighbouring countries, whether they join the EU or not.

Giving Europe a voice in world affairs

After the experience of Iraq, we should reflect urgently on the need to rebuild a genuine common foreign policy, with the intention of speaking with a single voice on world affairs.

Mr Kok concludes "this enlargement is different from its predecessors because it shifts the EU to a new scale of activity: a continental scale of operation, which can enable it to function better, to deliver better results to its citizens, and to be an actor in world affairs ? provided that it seizes the opportunity".

GRAHAM AVERY

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The Kok Report is available on the website of the Robert Schuman Centre <http://www.iue.it/RSCAS> in three languages (English, French and German), and on the website of the European Commission <http://europa.eu.int/comm/enlargement> in twenty-one languages, including those of the future member states. It can also be obtained through the Commission's information offices in the countries of EU-28.

Will EU Enlargement Facilitate Transatlantic Leadership?

The association and enlargement policies are often described as the most successful areas of EU foreign policies. Like the European Convention's work for a new Constitution for the EU, they reflect democratic pressures for new forms of constitutional self-government at national and international levels that better protect citizen rights and peaceful cooperation across frontiers. Two centuries after the founding fathers of the United States invented the idea of constitutional guarantees of inalienable human rights, the EU's invention of an "international constitution of liberty" attracts and influences ever more third countries. Just as the US Declaration of Independence emphasized "that to secure these rights, Governments are instituted among men", so is the EU "founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms"

(Article 6). The EU Treaty explicitly requires "to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms" also in the EU's common foreign and security policy (Article 11).

This rights-based "international constitutionalism" of the EU extends to foreign policy principles that were already reflected in the US Constitution. For example, the new fundamental rights recognized in the EU's internal and external relations law – such as individual rights to free movement of goods, services, persons and capital, to non-discrimination and to social security across frontiers – reflect the constitutional idea that the limited scope of "enumerated rights" in national constitutions "shall not be construed to deny or disparage others retained by the people" (Ninth Amendment). The EU's multilevel governance and recognition of international treaties as "supreme law of the land" extend federal principles to international relations. In view of the EU's protection of rule of law and democratic governance across frontiers, the EU and its accession agreements can be viewed as modern "democratic peace treaties" whose legal significance goes far beyond economic integration.

Notwithstanding their common origins, the EU's international constitutionalism differs fundamentally from national constitutionalism in the US. The former evolved in order to overcome widespread constitutional failures in Europe, such as undemocratic regimes and periodic wars. The US has become the most powerful constitutional democracy and international military hegemon by avoiding and successfully fighting such constitutional failures (e.g. in World Wars I and II). The new US security doctrine of unilateral preventive wars (e.g. against international terrorism and dictatorial regimes supporting proliferation of weapons of mass destruction), the refusal by the US to ratify numerous UN treaties (e.g. on human rights, protection of the environment or the International Criminal Court), and the war against Iraq reveal an increasing self-reliance by the US on constitutional

democracy and US military power rather than on power-oriented UN rules (e.g. on collective security) which have persistently failed to secure democratic peace in all UN Member States.

The state-centered UN principles are also challenged from the EU perspective as being inconsistent with a supranational common foreign and security policy. EU membership in the UN – following the precedent of EC membership in the WTO, FAO, international fisheries organizations, the Law of the Sea Treaty and multilateral environmental agreements – could contribute to avoiding conflicting positions of EU Member States in the UN Security Council. An extension of the Community method to the EU's declared goal of a common security and defence policy would offer not only enormous efficiency gains (e.g. in European military industries) and budgetary savings (e.g. in the case of common military procurement policies). It could also enhance Europe's leading role as supplier of development assistance and of international peacekeeping troops, open new European career perspectives for integrated EU military forces, reinforce their operational interaction and military capabilities, and thereby promote European identity and consensus-building on how Europe



Ernst-Ulrich Petersmann

should respond to the US initiatives for a new international pax Americana.

The large number of transatlantic economic disputes tends to be settled peacefully through multilevel negotiations, rule-making and compulsory adjudication in the World Trade Organization. Domestic political support in the EU and in the US for the WTO remains strong in view of the obvious reciprocal economic, legal and political advantages of the WTO's global integration law. While the EU's "first pillar" (viz. the EC competence for a common commercial policy) has become universally accepted as a building block for the world trading system, the EU's "second pillar", a "common foreign and security policy", is not perceived – whether in Washington or in European and other capitals – as a "realist" foundation for a collective security system that effectively protects "democratic peace" beyond the EU. Without a more credible common foreign and security policy and more European burden-sharing also of military expenses, US self-reliance on constitutional democracy and on US military power remains rational.

The EU's ever more comprehensive foreign policy powers are part of the *acquis communautaire* that must be accepted by every acceding country. In areas of exclusive EC competences (e.g. for common commercial policy), some accession candidates may perceive EU membership not only as a gain in international bargaining power but – in connection with diplomatic representation of the "mixed EU delegation" by the EU Commission (e.g. in WTO negotiations) – also as a loss of national foreign policy autonomy. In areas of concurrent EC competences (e.g. in the field of international environment and transport policies), and in the common foreign and security policy of the EU, the unanimity required for certain foreign-policy decisions and for the conclusion of "mixed international agreements" will become more difficult to secure among 25 EU member countries. The extension of multilevel governance and

multilevel constitutionalism to accession countries does not guarantee a corresponding deepening of the common foreign and security policy of an enlarged EU.

The inadequate EU leadership in the Doha Development Round negotiations on trade in agriculture, the WTO dispute settlement findings of violations of WTO rules by the EC and the conflicting positions of EU member countries towards the war in Iraq illustrate that the EU's "domestic policy constitution" does not prevent protectionist power politics and violations of the law in EU foreign policies. Most of the ten future Member States are relatively "small" countries whose accession to the EU reflects their rational preference for "rule-based multilateralism" rather than power-oriented unilateralism. The enlargement of the EU's frontiers is therefore likely to reinforce political support for a stronger "foreign-policy constitution" that protects democratic peace also vis-à-vis the EU's new neighbours in the East and reduces "transatlantic system frictions".

This may also require further constitutional reforms of state-centred worldwide institutions – similar to the explicit WTO and FAO provisions on EU membership – so as to enable the EU to exercise and further develop common foreign policies (e.g. in the UN Security Council and the IMF). It would be in the rational self-interest of new member countries to help the EU to become a more credible partner in transatlantic leadership for a collective security system that protects democratic peace and human rights in all UN Member States more effectively. The manifold challenges of the war in Iraq for European integration, for the transatlantic partnership, and for global governance are one of the research priorities of the Transatlantic Programme of the Robert Schuman Centre for Advanced Studies at the EUI.

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Some Recent Working Papers on Enlargement

RSC 2003/03

LORENA RUANO, *The Common Agricultural Policy and the European Union's Enlargement to Eastern and Central Europe: A Comparison with the Spanish Case*

RSC 2002/58

SUSAN SENIOR-NELLO, *Food and Agriculture in an Enlarged EU*

RSC2002/62

LORENA RUANO, *Origin and Implications of the European Union's Enlargement Negotiations Procedure*

RSC 2002/23

PETR JEHLICKA, *Environmental Implications of Eastern Enlargement of the EU: The End of Progressive Environmental Policy?*

The Fifth Enlargement of the European Union

The Academy of European Law of the EUI devoted part of its summer lectures of 2001 to the question of enlargement. These lectures were subsequently developed into chapters of a book entitled *The Enlargement of the European Union*. The book is edited by Marise Cremona, professor at Queen Mary University of London and member of the Institute's Research Council. It was published in early 2003 as one of the four annual volumes in the series of Collected Courses of the Academy of European Law, a series which is handsomely produced by Oxford University Press.

The chapters of this book are written by three lawyers (Marise Cremona, Marc Mareceau and Bruno de Witte), two economists (András Inotai and Phedon Nicolaides) and two political scientists (Karen E. Smith and Milada Anna Vachudova) and aim at offering a multidisciplinary and multifaceted perspective on the enlargement process. The single chapters deal with the pre-accession process, the enlargement negotiations, the economic impact of enlargement on the candidate States, membership conditionality as applied by the European Union, the need to adapt the EU's institutional structure to cope with enlargement, and the impact of enlargement on the external policies of both the EU and the candidate States. A number of key themes emerge from these various dimensions of enlargement.

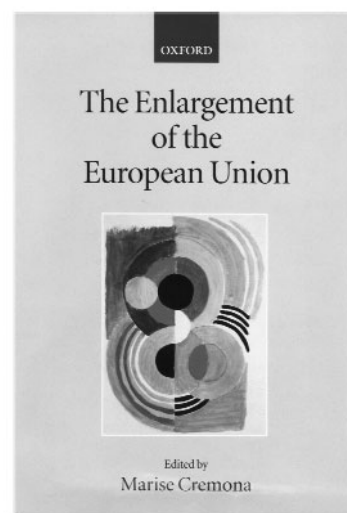
One such theme is that the pre-accession process was not just about political will and extenuating negotiations, but included a number of elements - pre-accession instruments and strategies, including monitoring and Accession Partnerships - that imposed institutional demands on both the candidate states and the Union itself. The political criterion for membership (stability of institutions guaranteeing democracy, the rule of law, human rights and the protection of minorities) is explicit as to the need for an institutional underpinning of constitutional values. But also the ability to fulfil the economic criteria for membership (a functioning market economy) and the ability to take on the concrete obligations of membership are dependent on setting in place an effective legal and institutional infrastructure already prior to accession. Whether the new Member States have, in fact, sufficiently improved their institutional capacity is debatable.

Whether the European Union has been able to improve its decision-making capacity prior to enlargement is very debatable indeed. The Treaty of Nice, which was supposed to make all the institutional reforms that the EU needed in order to cope with the

accession of ten or more new states, was a failure. The question of the institutional reforms necessary for enlargement has since been merged entirely with the broader questions of EU constitutional reform discussed today by the Convention on the future of the Union, and tomorrow by a new intergovernmental conference.

The actual date of accession of the ten States, scheduled for 1 May 2004, is intended to coincide in time with the date at which the new Constitutional treaty of the European Union will be signed. Whatever will happen in 2004, it is clear already now that enlargement is not just a matter of ten new members joining an otherwise unchanged club. The present enlargement, by its sheer size and by the breadth and length of the pre-accession phase, is bound to affect the constitutional development of the existing club in a major way.

BRUNO DE WITTE



Before Enlargement: Importing the Law of Western Democracies

Catherine Dupré, *Importing the Law in Post-Communist Transitions, The Hungarian Constitutional Court and the Right to Human Dignity*, (Oxford, Hart Publishing, 2003), xx + 217 pp.

This book, one of the very first monographs on the Hungarian Constitutional Court available in English, is a unique study of the birth of a new legal system after the collapse of communism in Central and Eastern Europe. While focusing on the Hungarian experience, this book engages with international debates and provides an original theoretical framework for approaching the movement of law from the importers' perspective. It shows that the genesis of the new legal order was determined by massive Western involvement and an unprecedented movement of export/import of law. It is rooted in the analysis of the right to human dignity enshrined in article 54(1) of the 1989 constitution as construed by the Hungarian Constitutional Court between 1990 and 1998, together with a detailed comparison with German constitutional case law from which it was imported.

The first part of the book reflects on the ideological nature of the legal transformation that took place remarkably quickly, thus leaving very little time for drafting new constitutions. This, together with the fact that the legal reconstruction took place under close Western scrutiny, encouraged large scale importation of Western law. The term 'law' here is understood in its widest meaning as encompassing a rule, a principle, a standard of constitutionality, an institution or a method of adjudication. Law importation only designates the law of a foreign country and in that way it differs from mechanisms of reception or incor-

poration of international law for the purpose of compliance with its requirements. This study proposes a reflection on the movement of export/import of law, identifies categories of exporters and suggests two main reasons for importing the law in post-communist transitions: the sense of failure of communist law and the institutional optimism that characterised the early years of the changes.



Catherine Dupré

The central part of the book is grounded on a detailed study of human dignity in Hungarian case law, read in the light of German constitutional case law. It is also read in the wider context of the changes in Hungary taking into account in particular the weight of communist law and of the communist understanding of law, which coexisted for some time with the new, i.e. liberal approach to law. This part of the book explains how the prestige of German law and the importers' background determined the choice of German case law as a model. However, the comparison sheds light on numerous significant differences between the two sets of case law. This, it is argued, reveals that law importation is not law imitation and that the Hungarian Constitutional Court

instrumentalised the law it imported. The concept of human dignity as imported by the Court enabled it to filter out the rules inherited from the communist era and no longer compatible with liberal principles. At the same time, the Hungarian Court used the imported law to lay the foundations of a new concept of individual fundamental rights, thus moving away from the communist understanding of rights.

The last part of the book argues that the use of imported law in constitutional case law is presented in the language of a modern substitute for natural law, that merges with a justification drawn from the globalisation of law. This arguably served two purposes for the Court during the years of transition. First, the natural law type of reasoning protected the Court from criticism of its creative approach to the text of the constitution. In addition, presented as a modern substitute for natural law, imported law provided new constitutional benchmarks and principles of justice to replace the ones developed under communism. Second, by speaking the language of modern, i.e. Western democracies, the Hungarian Court endeavoured to take part in the elaboration of a body of law common to liberal democracies and to be seen as an active participant in the process of globalisation of law. The book closes by reflecting on the genesis of a new legal order and the vulnerability of the importation strategy after the end of the specific circumstances of the transition. This study, it is hoped, will remind readers that before the European Union considered enlarging its borders to the East, the future Member States had taken significant steps to get closer to the West.

A Comprehensive Handbook on European Enlargement

Dr. Andrea Ott, Jean Monnet Fellow in Law, senior research fellow in European Law and International Economic Law and head of the EU law section at the TMC Asser Institute (the Netherlands) has edited, together with Kirstyn Inglis, senior researcher from the University of Ghent (Belgium), the Handbook on European Enlargement, the most comprehensive legal commentary on the enlargement process. This research and publication project brings together 52 leading authors from Member States and candidate countries working in the European Commission, universities and public administrations. The research project lasted from 1999 to 2002 and was published in October 2002 by TMC Asser Press, The Hague (further information



Andrea Ott and Kirstyn Inglis facing Günter Verheugen

<http://www.asser.nl/hee.htm>) Thanks to the financial support of the European Commission, the editors were able to hold two authors' meetings, at the TMC Asser Institute, The Hague, in April 2001 and at the Central Eastern European University in Budapest in March 2002. The launch of the Handbook was celebrated in the presence of twelve authors, including Professor Marc Maresceau of Ghent University, on 6 November 2002, and authors and editors had the opportunity to hand over a copy to the Commissioner for Enlargement, Günter Verheugen. The editors explained to Commissioner Verheugen the concept and rationale behind this vast, comprehensive and consequently also unique multi-country book project. In his speech, Commissioner Verheugen thanked the TMC Asser Institute, editors and authors for publishing such a comprehensive book on the enlargement, and commented on the enlargement process.

The underlying rationale of the Handbook on European Enlargement is to depict and analyse the legal framework of the enlargement process and to provide a comprehensive guide to academics, practitioners and students. To do this the HEE covers the Europe Agreements and Association Agreements, decisions of the Association Councils, appropriate judgments of the ECJ, the Accession Partnerships and the candidate countries' National Plans for the Adoption of the Acquis, as well as the role of the Eu-

ropean Commission (Progress Reports), the funding instruments that underpin the whole process (PHARE, ISPA, SAPARD) and the legal systems of the candidate countries.

Dr. Ott was available for a short interview about the genesis of the project and its objectives:

The Handbook on Enlargement is a far-reaching project spanning over 1,000 pages and involving 52 authors from various backgrounds and from all parts of Europe. What was your main motivation to embark on such an ambitious endeavour?

There were several factors which gave impetus to this project. First, the Asser Institute where I have been working as a research fellow for 5

years has extensive experience with consultancy work in Central and Eastern Europe. In fact, the Asser Institute was one of the first Western academic institutions to establish contacts with universities in Central and Eastern Europe, and since 1989 it has extensively cooperated in post-graduate training and research programmes. The Institute has also been training lawyers under the MATRA programme of the Dutch Ministry of Foreign Affairs, and has since 1997 been active under the PHARE programme of the European Union in advising candidate country governments on EU law and the adoption of the acquis. Through my work for Asser, I have gathered considerable experience in consulting and teaching European law in Central and Eastern Europe myself, and I thought that it would be useful to draw on the established network also from an academic point of view, as a platform, so to speak. This would at the same time provide the opportunity to involve not just established authors but also younger colleagues, in a common project. Furthermore, I was able in Kirstyn Inglis, who has been working on enlargement matters for Professor Maresceau at the European Institute of Ghent University, to secure an experienced researcher for the project.

Secondly, I would say that there was at the time of launching the project no coherent, structured account of the enlargement process. There were some

political-science publications, but no comprehensive legal account of the process. Accordingly, one of the motivations behind the Handbook was to cover this gap in the literature. Of course, the project was bound to be ambitious, as all countries needed to be represented, but this also provided us with the occasion to include much-needed references to national contributions, not just British sources. This made it possible to pay adequate tribute to different legal cultures and make the analysis less one-dimensional.

The Handbook offers a “legal commentary” on the enlargement process. Could you say a few words about this method of analysis?

The legal commentary is a German method of analysis in which the author seeks to give an interpretation of various articles or principles of a legal text in a systematic manner. The Handbook does this for the legal framework of the enlargement process. It covers the Europe Agreements and the relevant Association Agreements with Turkey, Cyprus and Malta, the decisions of the Accession Council, ECJ rulings (where applicable), the National Programmes for the Adoption of the Acquis (NPAAs), the Regular Reports, the various funding instruments and the legal systems of the candidate countries. In this way the Handbook aims to provide a comprehensive guide to the enlargement process and to serve as a reference and guidebook for practitioners, academics and students – hence the extensive footnotes.

The problem with this type of analysis was that in the enlargement process there was no legal instrument binding on both the EU and candidates apart from the Europe Agreements, and as lawyers we actually found it difficult to find something to analyse. In fact, in order to do a commentary, you need a legal text. Moreover, we were not sure how to structure the book. In the preparation phase, we spent some time comparing the structures of the Europe Agreements, the EC Treaty and the Regular Reports, but we did not find a coherent and consistent structure. To move through the negotiation chapters, as had been suggested to us, was not an option either, because this would not have been consistent with the legal structure of the EC Treaty or the Europe Agreements. So finally, in Part III of the Handbook which looks at the various parts of the acquis, (Part I deals with the political, historical and legal background of enlargement and Part II looks at the legal systems of the new Member States and how they incorporate international agreements, d.g.), we chose to take the Europe Agreement as the guiding instrument, but edited the structure to some extent: we start with free movement, the general principles and agriculture and go on to follow the structure of the Europe Agreement with a ‘creative touch’.

Another problem with the ‘legal commentary’ approach is the question of implementation of the ac-

quis. In Part III of the Handbook, for each section of the acquis, we first outline the Community’s competences in the policy area in question, then describe the existing and the ‘external dimension’ in terms of the provisions of the Europe Agreement and participation in Community programmes. The final section of each chapter takes a look at the implementation of the acquis – its legal basis as well as the concrete factual implementation. This was without doubt a good structure, and we insisted on following it through in each chapter of Part III of the Handbook. However, it was difficult to find authors who were both available and familiar with the issue of implementation: we could not get more national experts on board to tackle this issue, as the number of authors working on the project would have exploded, while experts involved in the process of evaluating the implementation of the acquis from the European Commission side were unavailable for political reasons. So we had to rely on the Regular Reports, the National Programmes for the Adoption of the Acquis and government information. We had to read between the lines a lot!

In the introduction to the Handbook you express the opinion that before an evaluation of this enlargement and its likely consequences can be attempted, the process as it has developed to date must be thoroughly analysed. Now that the latter task is accomplished in the form of this Handbook, what are your personal conclusions as to the enlargement process?

It is still difficult to draw conclusions. This enlargement is the most ambitious and most extensive yet, and will inject a new dynamic into the integration process. All sides have tried hard to make ends meet and let the enlargement process unfold in parallel to various internal projects. Precisely because of these parallel processes, many daunting challenges still lie ahead, despite the fact that everyone has put such an effort into EU enlargement. There is the enlargement process as such – the accession – on the one hand, but on the other hand, the face of the European Union is likely to undergo major changes once the new Member States have acceded, and the situation will again be completely different.

Bringing together such a large network of specialists, both academics and practitioners, from all over Europe is without doubt one of the major achievements of this project. Are there going to be any ‘post-Handbook’ initiatives or projects based on the same pool of experts?

Yes. Kirstyn Inglis and I are planning to use the network we established for a follow-up project including a researcher seminar and a summer course to examine the post-accession phase in the course of next year.

Interview & editing: DANIELA GREGR (SPS-3)

New Member States: Some Reflections after the First Decade of NMS Researchers at the EUI

With a view to collecting the impressions of some of our current researchers from the Central and Eastern European countries, or future Member States, the Academic Service organized a small roundtable meeting to hear about their intentions after their studies at the EUI.

At the beginning of the exchange of views the question was raised about the Institute's policy towards the New Member States and what kind of initiatives had been taken over the last years as regards the current member states. A short overview of the Institute's activities in this respect was given.

In the early nineties an Institute delegation visited most Central European countries to establish links with their major academic institutions. These contacts resulted in a number of agreements which were the basis of the first Phare-Tempus programme that worked very efficiently at the beginning of the 1990s. By the mid-90's, owing to the stricter EU rules and regulations, it was no longer possible for the Institute to participate in the programme, and alternative ways of funding then had to be found so that the Institute's programme could be continued. In fact, it was through the Italian Foreign Ministry that this finance was found and the Italian authorities still continue to fund 20 researchers per year from the C&EE states.

Secondly, during the drafting of the Strategic Report for the coming decade (the report was approved in December 2001) specific policy decisions regarding the enlargement of the EU were taken. Some of the critical issues in this discussion were whether or not the Institute should further increase the number of its researchers. In this respect a very interesting discussion developed, in which the influence of current researchers was such as to state that the EUI should be careful not to become too large. If it were to grow beyond a certain size, the kind of intimacy which now characterizes it, and which allows for good relations in supervision and teaching, could be jeopardized. When one looks at the most successful American programmes and graduate schools it is interesting to observe that there seems to be a critical size at which a top graduate schools functions best – somewhere between 150-200 graduate students.

As a result the Institute decided that it would not grow beyond 600 researchers. At the moment of taking that decision there were slightly over 500 re-

searchers at the Institute, already including around 40 researchers from future Member States, so that there would be place for about another 100 researchers. To meet this objective, further efficiency of the doctoral programme would be required which the Institute hopes to obtain by the introduction of a fourth-year grant, in order to further shorten the time-to-degree and increase the success rate of doctoral defence.

Regarding the question of what had become of researchers from the first generation of the nineties, information was available from a small survey that had been conducted. Generally the following could be stated: slightly more than half of the (40) researchers had been at the Institute for only a short period, for one year or less. This had been due to the limited financial possibilities in the very early phases of the exchange programme – at the time Tempus did not allow funding for more than one year. For this reason, a number of these researchers had only been able to participate in the LL.M programme or leave



Dr Jacek Saryusz-Wolski and Dr Masterson on 17 May, 2000 sign the Co-operation Agreement between the Polish Office of the Committee for European Integration and the EUI

with an MA in economics. Visiting students from other institutions also came to the Institute. Of the overall number of people who had replied to the survey – 21 out of 40 – it was clear that 80% had returned to their home country, and two-thirds of those 21 were active in academia. Thus, one of the main concerns with the exchange programme, viz. that Tempus would contribute considerably to the brain-drain from the C&EE, seemed unfounded.

Research Student Candidates: Applications in 2002 and 2003

Group	2003-2004					2002-2003					Annual Variation		
	ECO	HEC	LAW	SPS	total	ECO	HEC	LAW	SPS	total	total	% + -	
EU (& AMS Norway, CH)	133	158	268	305	864	108	142	319	284	853	11	1%	
Poland	36	28	50	108	222	17	10	28	23	78	144	185%	
Other C.E.Europe, NMS	18	14	65	79	176	27	7	51	44	129	47	36%	
Russia, CIS	20	9	16	20	65	16	8	15	20	59	6	10%	
S.E. Europe	1	2	10	4	17	6	1	10	14	31	-14	-45%	
Med. Programme	4	0	4	13	21	10	2	7	14	33	-12	-36%	
Rest of World	8	2	21	23	54	7	7	10	13	37	17	46%	
Total number	220	213	434	552		191	177	440	412		1220	199	16%

During the discussion with the researchers present at the meeting it transpired that the majority also intended to return to their country of origin once they had finished their doctorate. One group intended to return immediately after the PhD because they had already been offered teaching positions at their own universities. Others were thinking of extending their stay abroad by one or two years in order to get some postdoctoral experience at another university in Europe or beyond. One of the main concerns was that in most C&EE countries there does not seem to be a generalized policy for recognition of the EUI doctorate, or non-national doctorates in general. This is not a new phenomenon: in the past the Institute has had to make special efforts to convince Member States' national authorities to recognize its doctorate.

Turning to the researchers' experience of postgraduate research in their home countries – bearing in mind that some of the group were only first-years and others on the point of finishing – when comparing home universities with the EUI, it became apparent that there would have been no formal teaching programme in their country of origin, and that doctoral research would have been very much an isolated, self-made exercise, with infrequent contacts with their supervisor. From this point of view therefore, the Institute's structured doctoral programme was much appreciated, all considering the first year of the programme, with its various requirements, to be a positive and useful exercise for their doctoral work.

Note should also be made of the fact that two of the new members states, Poland and Hungary, have both

already signed pre-accession agreements with the Institute, paving the way to full membership of the EUI very soon after accession to the EU. Both have established grant programmes allowing their own nationals to attend the Institute, while in the absence of agreements with the other New Members States, certain EU countries have stepped in to assist the Institute in this crucial accession stage, by offering scholarships to C&EE researchers. Mention has already been made of Italian support (which also includes funding from the Cassa di Risparmio di Firenze), but in past years Luxembourg has sponsored researchers' studies – and continues to do so – while very recently, both the Austrian and Finnish authorities have said that they too will contribute. In this way, the yearly admission of C&EE researchers need not suffer. Over the decade from 1990 to 2000, the Institute admitted about 100 candidates from C&EE, Russia and CIS and next academic year the Institute expects to register about 12 researchers from these states.

In conclusion, it has to be underlined that despite the generous support of some of the EU Member States, the number of grants available for non-EU candidates is still insufficient. One can see by looking at the number of applications to the Institute, even only at the figures of the last two years, that there has been a sizeable increase in interest in the EUI by future Member States of the EU but this cannot, unfortunately, be matched by a similar increase in grants.

Central and Eastern European Constitutions and EU Integration: In a decade from 'sovereinism' to 'federalism'?

Following the kind invitation by the EUI Review, this article provides an overview of my Ph.D. thesis on adapting Central and Eastern European (CEE) constitutions for EU accession, which was defended on 20 May (Examining Board: Professors Giuliano Amato, Rainer Arnold, Wojciech Sadurski and Jacques Ziller). EU integration of CEE countries has been a very interesting case for research because these countries regained their sovereignty only a little over a decade ago, yet are now in the process of delegating part of it to one of the most highly integrated organizations in the world. Furthermore, they could be said to be taking two fundamental constitutional steps at once, because they are joining a Union which is preparing reforms increasingly characterized in 'federalist' terms.

In comparison with the Member States' constitutions, the CEE constitutions are highly protective towards sovereignty, and have been described in the thesis as 'sovereinist' constitutions. This is because these constitutions start with a complex set of sovereignty provisions, distinguish between independence and sovereignty and provide a number of safeguards. For instance, the Estonian Constitution declares that sovereignty and independence are timeless and inalienable; the Hungarian Constitution calls for prosecution of acts against sovereignty; the Lithuanian Constitution prohibits restriction of sovereignty. In addition, nine out of the ten constitutions did not, until recently, contain provisions on delegating powers to international organizations, and the amendment of sovereignty provisions is prohibited in some countries and involves a referendum in many others. Amongst current Member States, by comparison, six constitutions do not mention sovereignty at all, four use a one-sentence formula that sovereignty belongs to the people, and only the constitutions of Luxembourg, Portugal and Ireland are more complex about sovereignty. All provide for delegating powers to international organizations, and several also directly to the EU.

In order to join the EU, this *pouvoir constituant's* recent pact in CEE countries for exclusively domestic exercise of powers had to be revised, and they accordingly engaged in the process of amending their constitutions and holding accession referendums. The amendments were adopted earlier in the countries where amendment procedures are easier - Slovakia and the Czech Republic in 2001, and Hungary in 2002. Poland adopted a new constitution in 1997.



Anneli Albi

Slovenia and Latvia introduced amendments in spring 2003; Lithuania made two technical amendments in 2002 and 2003. Estonia's amendments await confirmation by referendum this September, and Bulgaria and Romania are still at the drafting stage. In most countries, the amendment process has involved delicate procedural and political manoeuvring to reconcile, on the one hand, the historic opportunity of joining the EU with, on the other, popular sentiment about delegating sovereignty, difficult amendment procedures and/or relatively eurosceptic opinion in many countries. In the run-up to accession public opinion has been quite pro-EU, but in the earlier years when the amendments were actually drafted support levels were lower, or at the 50% borderline, in at least six countries - the Baltic States and Poland, the Czech Republic and Slovenia. In this context, the amendments tend to remain fairly minimalist, particularly as concerns their extent and content and some procedural solutions.

As regards minimalism in the extent of the issues, the amendments are remarkably extensive in Slovakia, the Czech Republic and also Slovenia, but in other countries they merely provide a laconic basis for EU accession and do not include other issues which the experts and scholars have deemed to need amending. For instance, Hungary's amendments intentionally provide for the minimum for accession, leaving the resolution of conflicts to the Constitutional Court, especially as concerns EU law's supremacy in Hungary's dualist legal order. In Poland, experts find that the 1997 constitution contains several conflicts with EU law, such as the restriction of voting in local

elections to citizens, but these issues will be solved by interpretation before accession. Estonia and Latvia introduce a laconic provision authorizing EU accession. As concerns the content, most countries chose initially to address international organizations more broadly rather than the EU, and this is still the case with final amendments in Slovenia, the Czech Republic, Poland, Latvia and Lithuania. The international organization approach tends to reflect the conservative nation-state-centred perception of sovereignty and democratic legitimacy. The amendment working groups follow the constitutionally embedded distinction between independence (external sovereignty) and sovereignty (internal sovereignty or State competences), explaining that State competences may be delegated to the EU, which is an international organization or a looser union of sovereign States, whereas independence must be preserved.

Procedural minimalism characterizes the Baltic countries - they will not hold constitutional amendment referendums, although the constitutions expressly require referendums for amending sovereignty provisions, and the working groups have explained that the EU does not harm sovereignty. There have also been high-level political voices saying there is no need to amend the constitutions or to hold referendums. In fact, in Estonia, the Constitution will not be amended, but 'supplemented' by a constitutional act, providing for the Constitution to be interpreted in the light of the Accession Treaty; this solution has led to public criticism about devaluing the Constitution and bypassing the rigid amendment procedures. In Latvia, the amendment of sovereignty provisions requires a 50% minimum turnout, but it was found that EU accession does not harm sovereignty, and the amendments accordingly introduce a new type of EU referendum, which has a lower turnout requirement.

These minimalist solutions lead us to a more fundamental question about the role of the constitutions in the process of EU integration. This does not concern just the candidate countries but also those Member States whose constitutions are still silent on EU membership and have been criticized by lawyers for becoming somewhat 'obsolete'. The rationale of a constitution is to determine effectively the distribution and exercise of powers in a State. This is especially important in CEE countries, because their new constitutions are clear, directly applicable and up-to-date legal documents, as a reaction to their 50 years' experience with Soviet-style declaratory pseudo-constitutions. Thus, so that the constitutions can live up to their purpose and justification and avoid being devalued, the thesis points out some areas where they should include references to EU impact on sovereign exercise of powers, drawing on the theoretical literature following the German Maastricht decision and calling for a revision of the traditional concept of

sovereignty. However, these potential constitutional adaptations concern medium- or long-term solutions in the post-accession period, as immediate amendment would involve too high political costs. At the same time, the Slovak Constitution does contain remarkably extensive EU provisions and could be recommended as a model for other candidate countries, not to mention several Member States.

The thesis also examines some areas where the CEE constitutions may impact the EU Future Debate. For instance, it points out that the Central-Eastern constitutional procedures are relevant to reforming the EU treaty amendment procedure, which currently requires unanimity and ratification in accordance with 'national constitutional procedures' (Art. 48 TEU). The thesis shows that enlargement is not just a question of numbers, but these 'national constitutional procedures' in CEE countries do involve distinct complications: there is a tradition of holding referendums frequently; in many countries referendums require a 50% minimum turnout, which the majority of recent referendums have failed to meet; the people have historically-conditioned anti-federalist sentiments; unsuccessful referendums may not be re-initiated within 1-4 years in a number of countries. These factors are likely to increase challenges to potential future amendments of the 'European constitutional treaty' and thus add an argument to the camp of those advocating facilitation of the treaty amendment procedure.

Finally, the thesis points out a paradox with regard to the pre-accession adaptations: through accession, the candidate countries in fact seem to regain some of their sovereignty, because they will start participating in the decision-making process. In the last few years, these countries have adopted EU law, which includes even areas beyond EU domestic competences, such as social and judicial reform and rights of national minorities, on the basis of the Copenhagen criteria and so-called 'conditionality documents'.

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(as of July 2003)

Governance, Enlargement and Media Issues

Governance, Enlargement and Media Issues (GEMI) is a research project conducted within the RSCAS supported by the the European Commission's Directorate for General Research under the Fifth Framework Programme. It is directed by Dr. Alison Harcourt, Jean Monnet Fellow at the Robert Schuman and Professor John Horgan (DCU, Ireland). The project assesses the state of media development in accession countries and analyses issues of citizenship, governance and the media.

The project resulted in a two-day workshop held at the EUI (February 28 - March 1st, 2003), a 213 page report (available on CD-Rom upon request), and a special edition of the *Central European Political Science Review* (no. 11, 2003).

The two day workshop (<http://www.iue.it/RSCAS/Research/GEMI/Agenda.shtml>) brought together academics, politicians, national policy-makers, EU and COE representatives, and practitioners.

The first day of the workshop addressed the media's role in the accession process and how it is contributing to goals of consolidating a common European identity, informing the public on EU issues, and how well it is fulfilling its role of strengthening European values of democracy. Under discussion was the media's ability to report on European issues at national levels. This included an analysis of the communications policy of the European Union itself, as it affects, or is seen to affect, the emergence and development of the debate and of public opinion around issues relating to accession. Also discussed was the role of the media in the legitimizing the (European) project of democracy. It is clear that the media plays a larger role than has hitherto been supposed in this area, and that this has important policy implications not only for national governments but also for the European institutions themselves.

National policies can effect the creation of an open, democratic and civic culture in which political literacy and the creation of an informed public is as important as the many other functions which media serve: art, entertainment, information and education among them.

Day two of the workshop addressed media market and regulatory trends in accession states. Speakers reviewed recent (2001-2002) changes to media laws, present developments in media markets, public service broadcasting and the state of media diversity and political pluralism.

The GEMI project webpage, <http://www.iue.it/RSCAS/Research/GEMI/Introduction.shtml> provides a database of European Media Laws with downloadable texts, a searchable database on literature on the media in accession countries, information about project and workshop participants, biographies and affiliations of conference participants and links to related projects.

Dr Alison Harcourt, is conducting research on the media in the context of Eastern enlargement. Her two year study, funded by the British Academy combines theoretical insights from policy transfer models with empirical analysis of media policies in EU Member and Accession states. Media is identifiably a policy area that has witnessed a large amount of transfer from West to East. In addition to analysis of the role of Western expertise provided by international organisations and governments, the project looks at the role of interest groups and NGOs in the transfer of policy instruments to accession states. Key themes, such as the tension between pressure for market liberalisation and the regulation of the media as a public good (and its importance for democratic consolidation) are highlighted.

Of further interest is the effect an enlarged Europe will have on the formation of advocacy coalitions and agenda-setting in the media field and ultimately the development of EU media policy. How, for example, is accession to effect on the EU's stance on public service broadcasting, TWF revision and trade in audio-visual services on the WTO platform? Also of interest is the way in which accession States have grappled with difficulties in the media field (e.g. concentration, PSB funding crises, political intervention) and how these experiences can present lessons for Europe and ground for future European cooperation.

Dr Harcourt also coordinates the interdisciplinary Working Group on Media Law and Policy (<http://www.iue.it/Personal/JMF/Harcourt/Media-Group.htm>), established in September 2001 to explore policy changes resulting from innovations in technology. The group holds regular meetings with paper presentations group members and guest speaks, and hosts occasional workshops.

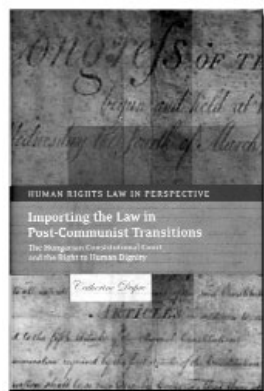
In May 2001, the group hosted a Conference on Media Freedom, Media Law and Media Policy in EU Accession Countries funded by the OSI and organised by group member Izabella Karłowicz.

ALISON HARCOURT
RSCAS

Recent Publications from the Institute

Stefano Allievi and Jørgen S. Nielsen (eds.), *Muslim Networks and Transnational Communities in and across Europe*, Series 'Muslim Minorities', Vol. 1, Leiden/Boston: Brill, 2003.

Adam Arvidson, *Marketing Modernity. Italian Advertising from Fascism to Postmodernity.*, Routledge: London and New York



Bruno de Witte (ed.), *Ten Reflections on the Constitutional Treaty for Europe*, Robert Schuman Centre for Advanced Studies and Academy of European Law, e-publication and printed edition

Dronkers, J., "Die Unterschiede zwischen dem Adel des zwanzigsten Jahrhunderts aus Amsterdam, Den Haag, Rotterdam, Utrecht und Deutschland". in *Amsterdam und Berlin: Konzepte, Strukturen und städtische Quartiere*, K. Adelhof, H. Pethe and M. Schulz (eds) Berlin: Geographisches Institut der Humboldt-Universität, pp. 81-91

Dijkstra, A. B. & J. Dronkers, "Civil Society as Equilibrium. Governance and Choice in Education: Between Private Delivery and Central Regulation". in *The International Handbook on Sociology of Education: An International Assessment of New Research and Theory*, C. A. Torres & A. Antikainen (eds). Lanham (MD): Rowman & Littlefield, pp. 325-341

Stefano Giubboni, *Diritti Sociali e Mercato. La dimensione sociale dell'integrazione europea*, Il Mulino, Bologna

Christian Joerges and Navraj Singh Ghaleigh(eds), *Darker Legacies of Law in Europe. The Shadow of National Socialism and Fascism over Europe and its Legal Traditions*. Hart Publishing, Oxford

Christian Joppke and Ewa Morawska (eds), *Toward Assimilation and citizenship: Immigrants in Liberal Nation-States*, Palgrave, Macmillan

Michael Keating, John Loughlin, Kris Deschouwer, *Culture, Institutions and Economic Development. A Study of Eight European Regions*, Edward Elgar, Chel-

tenham, UK - Northampton, MA, USA

Anna-Maria Konsta, *Working Time Law in Japan and the European Union*. Sakkoulas Publications, Athens-Thessaloniki

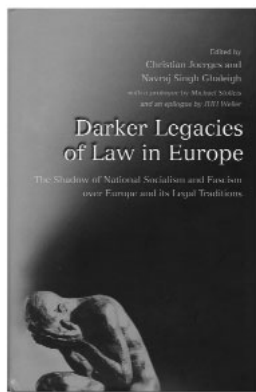
Yves Mény: "De la démocratie en Europe: Old Concepts and New Challenges" in *Journal of Common Market Studies*. Volume 41, Number 1, March 2003

Yves Mény: "From Popular Dissatisfaction to Populism: Democracy, Constitutionalism and Corruption" in *Governing Europe*, Jack Hayward and Anand Menon (eds), Oxford

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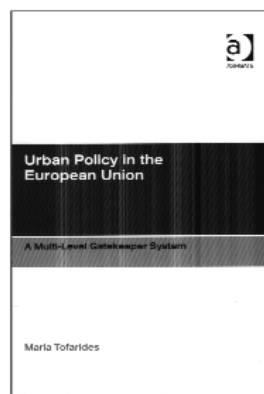


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Where are they now? Representing a City and a Region: Prague House in Brussels

In 1982 I left the EUI for Brussels, where I did a stage [internship] in the European Commission. After the stage in the Commission I worked with the Liberal Group in the European Parliament and then later with the Liberal Democratic Group as well as with the Federation of Liberal and Democratic Parties. At the end of 1987 I felt I needed a change and left for London, where I became European Manager of International Contemporary Arts (dealing with galleries and museums in some 20 countries).

During that period I also worked on a number of occasions as an adviser or campaigner manager for various MPs or MEPs during the national or European elections in several countries: Scotland, Italy, Wales, the Netherlands, and England.

After the “lifting” of the Iron Curtain I was attracted more and more to work in post-communist Europe, particularly in the Czech Republic, my country of birth.

Since May 1990 I have divided my time between my work in London and Prague. In Prague I first got involved in an advisory capacity in work for several Czech political leaders: first in the Citizens’ Forum, later in the political parties. At the same time I was working on a number of charitable projects in the Czech Republic: setting up the English College in Prague 9 (with the patronage of Prince Charles and the then Czech President, Václav Havel – this college is now considered the best high school in the Czech Republic), creating a specialist hospital, re-organizing the air rescue services, organizing funding for the Winston Churchill statue as a symbol of democracy (it stands in the centre of Prague, just like that in front of Westminster), bringing “the first Churchill” to Prague (Rupert, grandson of Winston Churchill).

In the process, I was getting more and more involved in political life in Prague city and Prague region, and this involvement culminated in setting up Prague House in Brussels, this being the first really independent representation of a candidate country region in Brussels, as was strongly emphasized in the contribution of EP President Pat Cox (official opening of Prague House, 25 June 2002). Prague House represents Prague Capital region to the European bodies. Its main aims are to represent Prague in Brussels, to analyse European affairs from the Prague point of view, to lobby, to monitor all EU affairs, to provide information services on regional policy, and to seek financial assistance for various city programmes. It also offers visiting Prague MPs logistic support. In addi-

tion, the House affords an opportunity for Prague to showcase its cultural heritage in Brussels and the European Union in the form of numerous and by now also famous vernissages and concerts.



Prague House tries to manage a considerable network of personal and institutional contacts with decision-makers from EU institutions as well as with regional representations accredited in Brussels, and the city is now involved in groups such as EURO CITIES, Cities for Cohesion (Prague was one of the founding members), the Union of the Capitals of the EU, EU Capital Regions Network, METREX (the Network of Metropolitan Regions and Areas), POLIS (European Cities and Regions Networking for New Transport Solutions), CLRAE (Council of Local and Regional Authorities of Europe), and NIROC (Network of Interest Representation Offices from Candidate Countries).

The activities of Prague House are numerous and varied. They are perceived very positively not only among the professionals in regional representations but also among the national groups and the various European institutions (the Commission, the Council, etc.). Prague House has also been regularly chosen as a venue for various events (including recently a meeting of the editors-in-chief of the European press, a working lunch of the Club de l’Europe, etc.). The culmination of our short but successful work has also been a selection of our Representation together with regions Baden-Württemberg, Catalunya, London, Bayern, Ile-de-France, etc. as the venue for a major presentation of activities of some of the best-functioning regional representations in Brussels on 7, 8 and 9 October 2003 (the “open door” days).

ZDENEK WERNER

Where are they now? Working up to the Second Wave of Accession

I started a new job recently in the UK Department for International Development (DFID) as Social and Institutional Development Advisor, in DFID's South East Europe Division. The main country programmes I am supporting are those covering Bulgaria and Romania, two countries which are on course to accede the European Union in 2007. I shall also be covering some programmes in Croatia and Macedonia, and giving advice on regional policy issues.

It is interesting to be working in a development agency, which has led the way in so much cutting edge international development theory and practice. In the late 1990s, DFID's Social Development Division advised the IMF on how to address the social impact of macroeconomic policies in developing countries, as the latter moved away from the more IMF-led Enhanced Structural Adjustment Facility (ESAF) to a more country led and owned lending process which had a stronger focus on poverty reduction (the Poverty Reduction and Growth Facility, with its accompanying Poverty Reduction Strategy Paper). DFID has gradually moved its own focus of support away from project based assistance to strategic support, to strengthen national policy making, public expenditure management and governance in public institutions.

Although DFID has relatively modest development programmes in Bulgaria and Romania, it seeks to apply its support strategically. As an organisation, we work closely with the World Bank and European Commission, to complement their programmes as far as possible. I expect to be visiting Brussels shortly, to learn more about CARDS (one of the key building blocks for implementing the Sta-

bilisation and Accession Process) and PHARE 2002, to ensure that our programmes are complementary to and supportive of EC regional and country strategies. I would welcome the opportunity to meet any EUI alumni who are working on similar issues!



Bulgaria and Romania's economies lag quite significantly behind those of the 'first round' transition economies of Central and Eastern Europe. They have major policy issues to address (Romania in particular) around the problem of social exclusion. Some of the issues these raise for me in my new job are, for instance, how do we improve the policy environment to encourage micro, small and medium enterprise development, while also ensuring that more marginal groups engaged at the smaller end of enterprise development are not further marginalized? What is the best way to support social policy: do we fund a series of projects to improve child welfare and probation services, or support a policy initiative such as Romania's National Anti-Poverty and Social Inclusion Plan Concept as the way forward, even if the institutional basis for implementing the Plan's Strategy appears rather weak at present?

I cannot finish without a few words about my work. I find it can

be fascinating, frustrating, satisfying and hopeless (often at the same time!). Both national governments and aid agencies have their own agendas, and the challenge is to navigate through a morass of differing and often opposed interests. Research suggests that aid is most effective in developing countries where there are already relatively sound macroeconomic policies and good governance. However, in a world of increasing concern over terrorism and the effects of globalisation on poorer states, we are forced to address the difficult question of what we should do in failing or failed states. As we consider inviting more candidate countries into our European 'club', we will need to look carefully both at how we reach consensus among the array of national interests in this club, and how we relate to 'outsider' states, both the stronger and weaker.

Ann Condry was awarded her PhD in Social and Political Science in 1991. Since then, she has worked in and for international development agencies and financial institutions, including UNICEF, UNFPA, DFID and the World Bank. Her experience of living in Florence and studying at the EUI proved an excellent preparation for working across Anglophone, Francophone and Lusophone Africa. She has provided advice to public-private-NGO partnerships, to improve service delivery and sustainability; and on poverty reduction strategies, to enhance consultative processes and policy linkages with national budgets. She was recently short-listed for a post as Social Development Officer in the IMF. The views expressed in this article are her own, and not necessarily those of DFID. She can be contacted by e-mail on: A-Condry@dfid.gov.uk or acondry@aol.com.

Where are they now?

In memoriam Constance Meldrum

Constance Meldrum (SPS, 1980) died in Edinburgh on March 1st 2003, a year and a day after the death of one of her closest friends, Delma MacDevitt (SPS, 1979) and scarcely six months after the death of another, Lammy Betten (LAW, 1979). For those of us who flourished at the Badia in the early 1980s, these premature deaths, along with that of Vibeke Sørensen (HEC 1982) in 1995, are almost a decimation of the finest of our generation. Each in her own way was a uniquely spirited and determined individual, in love with life, with Italy and with her friends. All four were characters of exceptional vitality and dynamism, not simply intelligent but possessed of great imaginative insight and irrepressible enthusiasm; none more so than Constance.

Constance was already somewhat older than most of her fellow researchers when she arrived at the Badia in 1980. She had come late to third level education and postgraduate research: after an early career in management and university administration she started her undergraduate studies, at the University of Warwick, when she was already thirty-one and followed them by postgraduate work in London at the Institute of Education under the distinguished philosopher, R. S. Peters.

Constance's family always claimed that Florence had a rejuvenating effect on her. Perhaps the truth of this remark is shown by the fact that her younger cohort of fellow researchers never really noticed. We knew she was a bit older but in the same way that we knew the Danes were a bit older. She stayed up as late, was just as argumentative in seminars or in the Bar Fiasco and as keenly involved in various researcher initiatives, both academic and social (including the now legendary pantomimes and the Jurisprudence Group). I remember a summer's evening in 1984 or so; two cars are proceeding down the Lungarno, after a dinner, heading towards the piano-bars of Florence. The one in front is being driven by Martin Bull, and sitting out of the window is Constance, with her feet on the passenger seat, one hand clutching the roof rack, the other giving a very regal wave to some astonished passers-by. The scene remains with me vividly because I was in the car behind, dri-

ven by Terry Daintith who remarked in his driest tones: "it really is difficult to believe that Constance will soon be forty".

Although intellectually devoted to her subject, the necessity of earning a living made its usual appearance. She had stayed on at the Badia working on conferences, translations and edited volumes; also some

notably successful summer schools which she organised for Philippe Schmitter and others. But the real world beckoned. Lectureships in philosophy in the UK were few and far between in the late 1980s so she went back into university administration at the University of Canterbury from where she was poached by the European Commission in the early 1990s to work on the Tempus programme and the negotia-

tion of education agreements between the European Union and Canada and the United States.

In 1992 her leukemia was diagnosed through a routine blood test. Amazingly it was nearly another eight years before her illness forced her to retire, years in which she did some of her best work for the Commission. Many might have regarded retiring to Edinburgh with leukemia as a sort of passive waiting time - but not Constance. A few years before, she had bought a flat in a Georgian house in the New Town, badly in need of repair and brought it up to her own standards, employing Edinburgh's most fashionable architect. Most would have left it at that but perhaps only Constance would have thought of opening her relatively small apartment to the public. On Edinburgh's Open Day, when many of the grander town-houses are made available for visiting, Constance, together with an architect friend who had carried out a more traditional flat conversion in the same street, opened their doors and awaited the hordes. The hordes came: in the space of eight hours, over six hundred people visited both flats, a number that Constance attributed to Edinburgh curiosity and the opportunity to poke around somebody else's home.

She continued to travel extensively to places near and far: the Orkney Islands, Argentina, Australia, South Africa. She frequently came to Tuscany to see



friends, dog-sit and assist the domestically challenged. And she often returned to Brussels to be with Delma. They last saw each other in February 2002 when Constance, already once operated on, had to return to Edinburgh to start her own ultimately futile chemotherapy. A second more radical intervention could not save her and left her needing a great deal of nursing care.

In July 2002, she moved to St Columba's, a hospice for the terminally ill on the Edinburgh coastline. Even then, she did not give up. She could not face down death but she faced into it, unblinking and with her usual flair. Typically, she had sent her surgeon a half-case of champagne for his efforts – a full case might have been excessive, she thought. In the hospice, as her illness made its dreadful progress, she set about extracting every last ounce of pleasure and interest from life. She instituted a cocktail hour where she received not only family and local friends but also the many people who travelled from all over Europe to see her. Their special task was to bring her gastronomic 'treats' to alleviate the monotony of hospital cooking: truffles, prosciutto, asparagus and olive oil from Italy, Lebkuchen from Germany, foie gras from Brussels. She bought pictures to decorate her room and pored over mail-order catalogues for presents for her friends. Her brother, David, movingly described one of her initiatives in his speech at her memorial service:

"Her last act of extravagance took place on the Thursday before she died. She had personally delivered to her a beautiful and expensive ring from Hamilton & Inches. She was delighted with it and showed it off to all and sundry. Now I must admit to thinking that this was a bit over indulgent of her but then afterwards I could see her reason. At the end of this illness Connie was painfully thin. She was just skin and bone. She didn't look like the Connie we knew. The only physical feature that remained of the old Connie were her hands with their beautifully manicured nails. And I think that's why she wanted that ring. She deserved it."

There was, I think, another reason for purchasing the ring: Constance's zest for life had allowed her to survive for far longer than she or anyone else had expected. When, one sunny day in July, she had discussed funeral details with me, I had stupidly suggested an outdoor service. "Not in Edinburgh in November, I think" was her instant reply*. But November turned into December which turned into January and Constance survived, greatly weakened. One of her sisters, Ann, took a long-planned trip to South Africa and Constance had promised to be there for her return. Buying the ring was one final project meant to keep her going until her sister came back. Catalogues were consulted; jewellers summoned to the hospice for measurements; decisions made about diamonds, gold and platinum. The ring was deliv-

ered a couple of days after her sister's return and she wore it for the first time at her last 'cocktail party' before sending it to the hospice safe-box that night.

The next afternoon, when her bed was wheeled out to the veranda for coffee, brandy and a cigarette she asked for the ring to be brought from the safe. Perhaps it was at the moment when she put it on that Constance decided to let go of a life no longer physically bearable: she became perfectly happy and at peace. That night her breathing grew shallower and shallower until, early on Saturday morning with David and Ann by her bedside, she drew a slightly deeper breath and was gone.

PETER KENNEALY

* Nor did Constance's sense of humour ever desert her. When discussing funeral matters with the hospice counsellor, she was bothered by some details that the counsellor thought best left to the people who would eventually attend: "You see", said the counsellor, "in a certain sense, it's their funeral as well". "Perhaps", said Constance, "but not literally", and arranged matters to her own liking.

News

The Italian Minister for European Community Affairs, Rocco Buttiglione visited the Institute on 15 April. Minister Buttiglione who is responsible for coordinating the Italian contribution to the works of the Convention talked about the European Convention.

Jean-Claude Trichet, Governor of the Bank of France on Monday 5 May gave a lecture entitled *Le Concept d'Union Economique et Monétaire: de Pierre Werner aux défis d'aujourd'hui*. This lecture was held within the framework of the Pierre Werner chair, named in memory of Pierre Werner, one of the architects of economic and monetary union, and funded through the generosity of the Luxembourg Government.



Rocco Buttiglione and Yves Mény



Jean Faltz, Luxembourg Ambassador to Italy, Jean-Claude Trichet and Yves Mény

Prof. John G. Ruggie of Harvard University on Monday 12 May delivered the Annual Lecture of the Transatlantic Programme entitled: *The UN and the Transatlantic Relationship: Institutions in Crisis?*

This year's Rotary Prize "Obiettivo Europa" has been awarded to Dr Klaus Adam (ECO 1996) for his thesis *Learning and Price Behaviour: Microeconomic and Macroeconomic Implications*. The prize-giving took place on Wednesday 21 May

Dr Miguel Poiars Maduro, LAW (at the Institute from 1991 to 1994) has just been appointed Advocate General at the European Court of Justice in Luxembourg.



Klaus Adam and his supervisor Ramon Marimon

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Views expressed in articles published reflect the opinions of individual authors and not those of the Institute.