



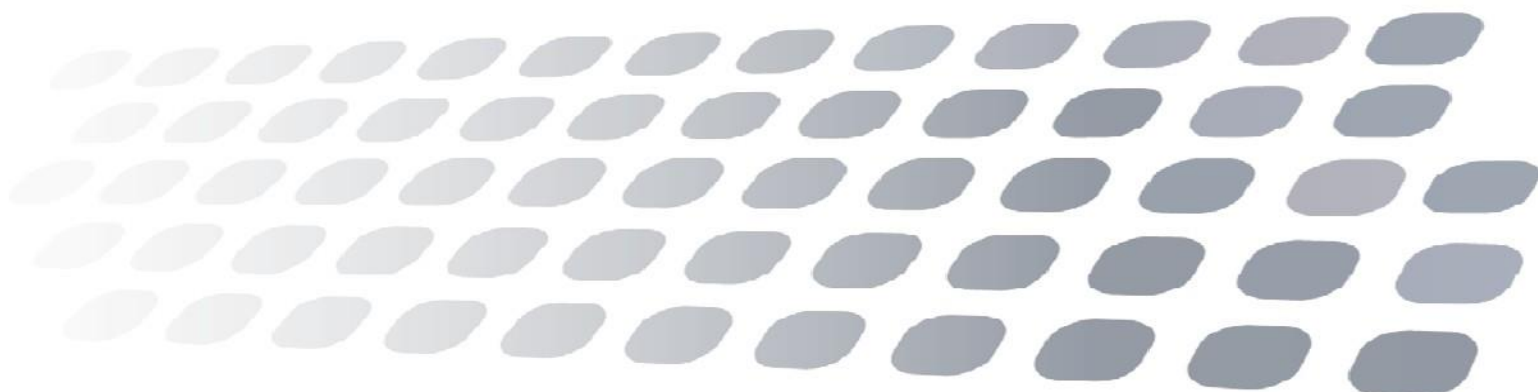
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TABLE OF CONTENTS

EDITORIAL

Amid Challenging Times

GIACOMO DELLEDONNE

Ed- I-IV

ESSAYS

Can Asymmetrical Constitutional Arrangements Provide an Alternative Answer for the Disputed? Bringing Constitutional Asymmetries into Play in the Middle East Peace Process

MAJA SAHADŽIĆ

E- 1-25

Climate change, food security and rights of peasants: how this complexity is addressed in the international legal framework

ROBERTO TALENTI

E- 26-35

European Integration and Minority Nationalism: a Literature Review and Avenues for Further Research

MICHAL STRNAD

E- 36-67

Regional responses to COVID-19: A comparative analysis of EU and ASEAN policies to counter the pandemic

MARIA PAPAGEORGIOU AND DANIELLA SILVA

NOGUEIRA MELO

E- 68-85

Sustainable Agri-Food Systems, Climate Change and CAP Strategic Plans in the ambitious pathways of the EU after the Green Deal

ANDREA SABA

E-86-99

Addressing the limits of autonomy: Origin, organization and purpose of horizontal intergovernmental forums in three federations

YONATAN TESFAYE FESSHA

E- 100-123

The Normative Dimension of EU-ASEAN Relations: A Historical Perspective

GIOVANNI FINIZIO

E- 124-145



CENTRO STUDI SUL FEDERALISMO

PERSPECTIVES ON FEDERALISM



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Amid Challenging Times

by

Giacomo Delledonne*

Perspectives on Federalism, Vol. 12, issue 1, 2020



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Ed - I



1. A tumultuous year

I am writing these lines amid challenging times. The last few months have been dominated by the Covid-19 crisis. Sadly, the further evolution of this crisis is impossible to predict. As things stand, Covid-19 has deeply affected the world in which we live. This has already led scholars in law, economics and political science to enquire into the impact of the health crisis. In many jurisdictions, the handling of Covid-19 has revived the age-old discussion about states of emergency and the ability of constitutional law to provide appropriate instruments for addressing existential threats. In federal and regional jurisdictions like Italy and Germany, the distribution of competences has often come to the spotlight of public attention. In some cases, the need for a unitary crisis leadership has been highlighted, and the existence of multiple centres of decision-making has been accused of producing inefficiency and of diluting political responsibility. Entirely different viewpoints have argued that federalism and regionalism allow for differentiation and experimentation with innovative policies. This should be particularly welcomed due to the largely unknown nature of the Covid-19 threat, which hardly lends itself to rigidly unitary reactions. Moreover, so serious a crisis quite often leads to strong centralisation of power to the advantage of the central executive. Against this backdrop, the distinct centres of decision-making may serve as counterpowers, much in line with classical political thought.

Of course, the Covid-19 crisis has also affected the European Union. However, it does not seem correct to describe it as just another crisis in the difficult ten years or so that have followed the entry into force of the Treaty of Lisbon. It is a symmetric shock that affects, although to a different extent, all the Member States. The recovery plan for Europe, on which the heads of state and government reached an agreement in July 2020, was only a few weeks after the German Federal Constitutional Court rendered a landmark judgment on the Public Sector Purchase Programme of the European Central Bank. In sum, the issue of transnational solidarity has become more topical than ever.

Finally, the result of the presidential election in the United States will also have tremendous impact on the future of interregional cooperation in the next few years.

Meanwhile, *Perspectives on Federalism* has also experienced some change. At the beginning of the year, Giuseppe Martinico left his position as editor and I took over. Also on behalf of the other editor, Roberto Castaldi, I would like to thank Giuseppe wholeheartedly for



his invaluable contribution to the growth of *Perspectives on Federalism* and its increased international visibility. Meanwhile, new colleagues have joined Salvatore Aloisio and Fabio Masini in the Editorial Board of *Perspectives*: Susanna Cafaro, Andrea Cofelice, Francesco Costamagna, Olimpia Fontana, Claudia Morini, and Annamaria Viterbo. In its diversity, the Editorial Board reflects the commitment to interdisciplinarity that has characterised *Perspectives* since it was launched in 2009. I would also like to thank the Centre for Studies on Federalism and its director, Flavio Brugnoli, for their precious support. In the next issues, we will present some new initiatives connected with *Perspectives on Federalism*.

As usual, we encourage our readers to submit articles, review essays and notes, or to submit proposals for fully-fledged special issues.

2. The contents of this issue

In this issue, a number of topics are covered. Two articles delve into comparative federalism topics. [Maja Sahadžić](#) focuses on the peace process in the Middle East and the faltering consensus around the one-state and two-state solutions, and argues that this issue could be addressed in terms of ‘multi-tiered multinational systems’ with asymmetrical features. Building on comparative research, she offers an alternative point of view with regard to the Middle East. [Yonatan Tesfaye Fessha](#) analyses a trend of increasing relevance in contemporary federations, that is, horizontal intergovernmental forums that bring together the constituent units of a federation to the exclusion of the national government. His comparative research examines the rise of horizontal intergovernmental forums in three federal jurisdictions: Kenya, Spain and Canada. Two essays focus on the multiple challenges raised by climate change. First, [Roberto Talenti](#) considers how the international legal framework, including the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, addresses the relation between climate change, food security, and the rights of peasants. Second, [Andrea Saba](#) analyses the recent communications of the European Commission deal with the issue of sustainable farming and food system against climate vulnerability. [Michal Strnad](#) surveys past and present literature focusing the relationship between the European integration process and minority nationalism in the Member States of the European Union. As the current state of knowledge in this field is quite limited, he delineates areas of tension and a framework of



analysis for filling the gap. Finally, two pieces consider topics related to comparative regionalism. [Maria Papageorgiou and Daniella Silva Nogueira Melo](#) examine the reaction of the EU and ASEAN to the first outbreak of the Covid-19 crisis. The findings of their research show that both the EU and ASEAN should acquire a more proactive role in health and crisis management. In his essay, Giovanni Finizio, provides a historical reconstruction of the normative dimension of EU-ASEAN relations, whose ultimate goal is to assess the EU's ability to make interregionalism an instrument for the diffusion of regionalism, democracy and human rights within the partner organization.

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**Can Asymmetrical Constitutional Arrangements
Provide an Alternative Answer for the Disputed?
Bringing Constitutional Asymmetries into Play in the
Middle East Peace Process**

by

Maja Sahadžić *

Perspectives on Federalism, Vol. 12, issue 1, 2020





Abstract

Most traditional federal theory remains rooted in the notion that asymmetrical constitutional arrangements within a state structure are somewhat exceptional. According to contemporary federal theory, however, recent systems are multi-tiered and multinational, producing asymmetrical responses by default. In addition to suggesting that asymmetrical solutions are often required, this implies that some degree of constitutional asymmetry may provide grounds for the sustainability of the system. To this end, a more comprehensive approach is needed to investigate constitutional asymmetries as a mechanism for accommodating diversity in the Middle East peace process. It will require establishing a framework based on a notion of asymmetrical multi-tiered multinational systems, as well as exploring this framework to identify an alternative solution in the Israeli-Palestinian conflict.

Key-words

Middle East peace process, Israeli-Palestinian conflict, stability, constitutional asymmetry, multi-tiered systems, differences in identity



1. Introduction

The study of the Middle East peace process has become an important aspect of many scientific disciplines. It has advanced so far that computers have been employed to explore human behavior. The PeaceMaker game was invented as an electronic peace education instrument, in which participants on both sides commit achieving an acceptable proposal in the Israeli-Palestinian conflict (Kampf 2014: 9-14). The persistence of the dispute has evidently heightened the need for renewed proposals concerning the issue.

Long-established approaches for assessing the Middle East peace process have included two plans as a starting point. The ‘One-State Solution’¹ could be regarded as an egalitarian approach, as it revolves around balancing and safeguarding the interests of Israelis and Palestinians within a single state, regardless of its internal organization. The ‘Two-State Solution’ involves two groups in two separate states, projecting Palestine as an independent state alongside the Israeli border. The ‘Three-State Solution’ – which proposes restoring the territorial landscape to the one that existed before the Six-Day War in 1967, when the Gaza Strip was under the Egyptian and the West Bank under the Jordanian authority – has not received much attention. Not only these solutions were the starting point, but they remained relentless. In this light, the scientific community’s inability to move beyond the first two approaches suggests a deep entrenchment in long-standing proposals.

Given the points presented above, it is of palpable interest to address alternative theoretical routes in the study of the Middle East peace process. One possible approach would be to use contemporary rather than traditional constitutional law research in the area of federalism to address this issue in terms of ‘multi-tiered multinational systems’ with asymmetrical features. There are three reasons for this proposal. First, most traditional approaches fail to trace evolution in the internal structure of states. Second, for the most part, the arguments in these approaches are based on mono-nationalism. Finally, they propose symmetrical relationships as an essential integrative part of the states. Such constructions cannot be expected to address (at least not effectively) the current challenges with regard to changing the general understanding of claims to autonomy. This has been especially true of such systems like Bosnia and



Herzegovina, Belgium, Indonesia, Iraq, Italy, Malaysia, Myanmar, Spain, the United Kingdom, and many more. Threatened by autonomy claims from various sub-national entities, these systems accommodate these entities by employing asymmetrical solutions that are put into practice in order to hold the state together, thus bringing forth new types of state systems known as 'multi-tiered multinational systems'. In this way, the findings suggest fresh opportunities for embracing alternative points of view with regard to the Middle East peace process.

The first aim of this article is to respond to these theoretical challenges by establishing a new theoretical framework based on a notion of multi-tiered multinational systems that experience constitutional asymmetries. The second aim of this article is to apply this framework to the identification of situations in which asymmetrical solutions may offer an alternative in disputed territories, as in the Palestinian-Israeli conflict.

The article begins by addressing two touchstone factors in the Middle East peace process. It then shifts to focus to traditional and contemporary federal theory, highlighting new systems known as multi-tiered multinational systems with constitutional asymmetries. This is followed by a short discussion on the assessment of constitutional asymmetries in light of an alternative for the disputed parties in the Middle East conflict. The article ends with concluding comments and remarks about further research.

2. Mint vs. stale approaches

To date, two factors have been identified as being significant for examining the Middle East peace process: sovereignty and identity (Tilley 2015: 425). Importantly, these two factors are used as a touchstone for new directions in further considerations. Assuming that the co-existence of Israelis and Palestinians is not manageable under the present scope of circumstances, the present article suggests that the approach incorporating constitutional asymmetries should be employed in order to reach a solution. Correspondingly, the article suggests that this approach is quite receptive and versatile in accommodating new contexts (Blindenbacher and Koller 2002: xiii). The present article nevertheless differs from previous



studies in several key ways. In contrast to previous studies, this article points out that sovereignty does not play a deciding role in the resolution of the Israeli-Palestinian conflict. This expectation is fostered by studies focusing on a dynamic approach to federalism. With regard to identity, the article underscores the significance of discussing it in greater detail. Nevertheless, in order to address the identity issue, the article uses the term multinationalism in the further elaboration of its importance.

2.1 Non-essential sovereignty

The arguments in this article imply that sovereignty loses its importance under the dynamic notion of federalism. Unlike the traditional approaches, the dynamic notion of federalism centers on the identification of federalism with a process (Friedrich 1968, 7). It involves the idea of a federalism that is dynamic rather than of a static design (Friedrich 1968: 7, 173). With this in mind, federalism is a process in which a number of different political communities create arrangements in order to accommodate differences. It is also the process in which a unitary political community may transform into a federal community (Friedrich 1968: 7, 173). Given that a static model of federalism cannot outline new tiers between the central and local levels (Duchacek 1970: 279), a dynamic model offers certain advantages. They can be analyzed in line with two key points.

A first key point under the dynamic notion of federalism is that there is a wide scale of different systems (Friedrich 1968: 7, 173) (Popelier 2012: 43-44), which tend to expand the traditional classification of states according to federal theory. Recent scholarship points out that the 'Hamilton tradition', which classifies forms of the state as unitary, federal or confederate, based on their institutional features, offers the advantage of clarity, although it is not in tune with a variety of political systems in the contemporary constitutional sphere (Popelier and Lemmens 2015: 72) (Popelier 2014: E-3-E-4). Given that a state's institutional structure does not always reveal the true nature of the state, a state may be established as unitary but act as federal, and *vice versa* (Livingston 1952: 84, 87) (Palermo 2009: 14-15). In addition, the scope of difference fluctuates both between systems and within the same system in a different time frame, thus producing extreme varieties (Duchacek 1970: 5). That being the



case, some authors have suggested the term ‘federal arrangements’ to imply the existence of multiple ways to apply federal principles (Elazar 2006: 6).¹¹ Importantly, contemporary federal arrangements are detectable in federal-like or quasi-federal systems (e.g. India), regionalized unitary systems (e.g. Indonesia, Italy, the United Kingdom), even within transnational formations (e.g. the European Union) (Delmartino 2009: 38) (Palermo 2009: 17-18). For these reasons, the following sections address these new systems as a multi-tiered. In addition to eliminating the necessity of delineating federal systems (Popelier 2012: 43), this approach even excludes the possibility of doing so (Popelier 2014: 6). In the present circumstances, it is a case that the notion of the state itself is transformed (Keating 2001: 55). This is consistent with the view that traditional federal theory has neglected the fact that federal relations are dynamic and vibrant, due to the very nature of federalism, in addition to neglecting the fact that such relations take effect at several levels within the federal arrangement (Geys and Konrad 2012: 32-33).

A second key point under the dynamic notion of federalism is that contemporary federal states divulge lively processes under the dynamic approach to federalism. They thus entail a constant search for the autonomy of sub-national levels and/or groups, along with an ongoing quest to balance tensions. As an illustration, beginning in the second half of the 20th century (Máiz and Requejo 2004: 2), some unitary systems have reshaped their internal settings by bringing into existence tiers of government between the central and local levels (Liesbet Hooghe and Marks 2012: 17). Markedly, territorially based differences are likely to urge political groups to establish their own political authority and even to set up new states (Stepan 2004: 39).

Evidence of this tendency can be observed in several systems. After the ethno-territorial conflict, the Dayton Peace Agreement transformed unitary Bosnia and Herzegovina into a multi-tiered system composed of three constituent peoples, two entities, and one district (Sahadžić 2011: 18-23). Pressured by identity differences, Belgium has also transformed from unitary into a multi-tiered system based on regions and language communities (Popelier and Lemmens 2015: 2, 7). Indonesian provinces of Aceh and Papua received a special autonomy status after violent separatist claims (McGibbon 2004: 1). In Italy, identity differences caused a



process of regionalization (Palermo 2015: 227-228). Before joining Malaysia, Sabah and Sarawak proposed a list of conditions to safeguard their distinctive interests (Ongkili 1992: 155-156). Myanmar, as a deeply divided society, has been in a permanent state of constitutional reform while it attempts to apply federal principles to set a basis for peaceful coexistence of distinct groups (Breen and He 2020: 95-97). The relationship between Israelis and Palestinians has always been burdened with intense territorial claims. The relations have evolved along with joint and competitive systems of control including a center-periphery model, competing functional centers, and one community domination (Sandler 1988: 48-59). This proves that there had been some dynamic in balancing tensions whilst the relationship became ossified only recently.

Ultimately, the absence of the necessity to delineate federal systems indicates that the concept of sovereignty is losing its importance in state systems (Popelier 2012: 43-44). With this in mind, the dynamic process implies the assumption that the federal system functions in two opposing directions: association and devolution (Friedrich 1968: 176-177).^{III}

2.2 Salient identity

A second important factor in the Israeli-Palestinian conflict concerns identity. Relationships of identity and conflict center on conceptualizations of how various groups claim their specific existence based on linguistic, religious, cultural, ethnic, and other characteristics. Understood as a reflection of individual benchmarks, groups appear to manifest a singularity of belonging to a distinct group (Gellner 1993)^{IV} along with a sentiment of territorial affiliation (Livingston 1952: 85).^V This is because identity and territory are difficult, if not impossible, to disconnect due to their close association (Nicolini 2016: 297). Groups tend to reserve their individuality within layers of different belongings, however, especially within contemporary state structures.^{VI} Against this background, different groups, then, demand accommodation of their identities, thereby producing intense relations (Watts 2008: 76) both, vertically and horizontally. Evidence of this interpretation can be observed in situations in such regions as discussed above. By default, the accommodation of identity includes changes in territorial arrangements meaning that the coexistence of distinct groups might be determined



by successful territorial adjustments (Nicolini 2015: 55, 81). Eventually, the success depends on 'how the legal geography applies the identity rule to constituent units' (Nicolini 2015: 71). This is one of the controversies in the Middle East peace process. For both sides, identity is deeply ingrained in the territory and control over territory determines not only the identity of the population but also the identity of the territory (Cristiani 2016: 316, 321). Not surprisingly, this can explain a failure behind the concept of the non-territorial interpretation of autonomy (Sandler 1988: 55) in the Israeli-Palestinian relations.

There is one point of similarity between systems that experience diversity, namely asymmetry, which is also important in the following sections. In many states, the intensity of demands based in identity ultimately results in the establishment of asymmetrical patterns within the internal state structures (Máiz 2004: 7).

3. Constitutional asymmetry: shaken not stirred

Having reflected on sovereignty and identity, the following sections move on to discuss a theoretical framework relating to multi-tiered multinational systems with constitutional asymmetries. As a prologue to this discussion, it is important to spell out arguments for bringing into a play this new theoretical framework.

One major problem with the traditional federal-theory approach is that researchers tend to remain largely within the confines of traditional contexts. As noted in the introduction, several federalism studies assume that the federal state is composed of identical constituent units, which are equal in their relationships to each other and to the central level (McGarry 2007: 105). Coupled with this, symmetry is treated as synonymous with equality, while asymmetry is treated as synonymous with inequality (O'Leary 2011: 184) (Tarlton 1965: 872) (Nicolini 2015: 56). That being the case, traditional federal theory treats symmetry as an integration mechanism (Tarlton 1965) (Palermo 2009: 15), thus identifying centralization as the essential feature of a system (Tarlton 1965: 871-873). Moreover, traditional federal theory links symmetry to mono-national entities and their processes of nation-building (Ferran Requejo 2001b: 12-13) while regarding asymmetry as a harbinger of disunity or even separation among



the constituent units (Palermo 2009: 13-15) (Tarlton 1965: 874) (Fossas 2001: 73). Symmetrization is thus perceived as a mechanism for dealing with differences in the federal state (Nagel and Requejo 2011: 249), as it is regarded as safeguarding the stability of the federal system. To this end, asymmetry is considered an exception (Tarlton 1965: 871-873) (Palermo 2009: 15) (Gagnon 2001: 323), while symmetry is naturally implied (Burgess 2006: 212).

With this in mind, the present study proposes a shift from traditional toward contemporary federal theory, which proposes the concept of multi-tiered systems that develop territorially based divisions tied to differences in identity, which accordingly produce diverse effects in relationships between and among the tiers (Stepan 2004: 40). The concept of multi-tiered multinational systems with constitutional asymmetries could offer one alternative approach to the Middle East peace process. This is because the dynamic approach to federalism allows the exploration of new (or existing) types of state systems in a less restrictive way while considering the implications of identity and exploring the ways in which constitutional asymmetries could be employed in overcoming differences. The following sections discuss the exploration and construction of a theoretical framework for the concept of multi-tiered multinational systems with constitutional asymmetries.

3.1 Multi-tieredness

This article raises the point that the oversimplified traditional division of the forms of states into unitary, federal, and confederate is no longer suitable. One of the main drawbacks of traditional federal theory is that it fails to recognize and follow recent developments concerning the internal structure of states. It relies heavily on reputed ‘model’ federations^{vii} (e.g., the United States of America, Australia, Switzerland, and Germany), while disregarding the contemporary diapason of states (Popelier 2014: 4) (Feran Requejo 2011: 7) (e.g., Belgium, Bosnia and Herzegovina, Indonesia, Iraq, Italy, Myanmar, Pakistan, Spain, and the United Kingdom). These federal systems are mainly fragmenting states (Obinger, Leibfried, and Castles 2005: 8) often referred to as ‘holding together’ states (Stepan 2004: 33-35). For example, fragmenting unitary states (e.g., Bosnia and Herzegovina and Belgium) appear to reflect the development of new federal forms (Blindenbacher and Watts 2002: 9) by attempting



to accommodate emerging differences and holding the state together through federal arrangements (Stepan 2004: 33-35). Even though they are regarded as unitary systems, the United Kingdom (Laffin and Thomas 1999), Italy (Mangiameli 2014), and Spain are characterized by devolutionary processes that are difficult to ignore. These states have developed intermediary tiers of government between the central and municipal levels, in order to address intra-state differences, thus creating multi-tiered systems. With respect to the present territorial layout and divergent political orientation of the West Bank and the Gaza Strip in Israel, it is logical to wonder whether these divisions could constitute particular tiers. A multi-tiered system is thus defined as a system in which the central level is mixed with sub-national entities with the lawmaking power. Given that these levels are simultaneously divided and associated, the system could thus be described as multi-tiered for a reason: to support the idea of fluidity in the specification of state systems. Together, these findings support the assertion that, according to the dynamic approach, multi-tiered systems exceed the limits of the concept of sovereignty.

3.2 Multinationalism

A second, equally important disadvantage of traditional federal theory is that its arguments are based primarily on mono-national federal systems. For example, a research model in this scholarly research alludes to the premise that nation-states are the primary and lowest unit of comparison (Liesbeth Hooghe, Marks, and Schakel 2010: 2). Accordingly, traditional scholarship has paid little or no attention to the important role of diverse identities in the clarification of differences among sub-national entities. One possible explanation for this is that a uniform and symmetrical status for sub-national entities tends to be the norm within 'model' federations (Bird and Ebel 2007: 11). An alternative explanation is rooted in concealed ethnocentrism, which refuses to recognize distinct identities, as well as in states that are inspired by the federalism embodied in the purely territorial federal system of the United States of America (Kymlicka 2005: 128).



In contrast to these traditional interpretations, contemporary observations indicate that distinct groups tend to challenge the mono-national notion of the federal state with their constitutional agendas, which advance the accommodation of multinationalism (Tierney 2006: 9), particularly through different tiers of government. In other words, sub-state nationalisms have surfaced intending to give voice to distinct identities. This is especially true for the systems such as Belgium (Flemings and Francophones), Bosnia and Herzegovina (Bosniaks, Croats, and Serbs), Canada (the French-speaking community), Iraq (Kurds), Italy (the German and French-speaking communities), Malaysia (Bumiputeras of Sabah and Sarawak), and Spain (Basques and Catalans).^{VIII} Differences in identity markers between Israelis and Palestinians disable the idea of shared national identity (Sandler 1988: 59). Their strong ties to the territory put into sharper perspective the identity of the majority (Israelis) and the identity of the occupied (Palestinians). Contrary to theoretical claims and practical examples, the majority identity does not seek to create the so-called 'identity fiction' (Marko 2006/7: 251-279). It does, however, seek to abolish the identity of the occupied through what Braverman (2010) calls a project of reterritorialization (268). This forces the opposite identity group to retort, sometimes even with violent means. Ultimately, both profoundly divided groups claim an important link to the territory while attempting to marginalize the importance of the opposite group (Nicolini 2016: 290).

In this context, multinationalism can be described in terms of territorially based differences built on linguistic, religious, cultural, ethnic, and other identities, in which significant groups with one or more distinct identities claim important political autonomy based on these differences (Stepan 2004: 39).^{IX} Interests and demands from distinct groups in multi-tiered systems rely on particular identity backgrounds. Thus, the most prominent characteristic of multi-tiered systems with multinational characteristics is that distinct groups rely on multinationalism to situate their demands.

3.3 Constitutional asymmetry

Finally, a third drawback of traditional federal theory is that it proposes symmetry as an essential integrative part of federal states. In contrast to traditional scholarship, the multi-tiered



system and multinational societies set out challenges that are usually more intricate than those in 'model' systems (Feran Requejo 2011: 8). One main premise is that systems with a considerable degree of internal diversity adopt asymmetrical solutions^x for the purpose of accommodating diverse ethno-territorial interests and in order to protect the rights of sub-national entities (Moreno 1999: 149). A second main premise is that systems with a high degree of internal diversity tend to be the most asymmetrical (Agranoff 1999b:, 14). These asymmetrical systems are then described as states, in which at least one part has the benefit of autonomy, although other parts have less or no autonomy at all (McGarry 2007: 105).

The differences thus produce either a divergent constitutional position or at least the desire for a divergent constitutional position for specific sub-national entities. This is supported by the fact that asymmetry in multi-tiered systems results from the challenges of diversity, in which the pluralistic nature of the system demands the design beyond the equal distribution of their governing capacities (Agranoff 1999b). It is important to note the wide range of possibilities in which constitutional asymmetries may be altered on behalf of one or a few sub-national entities.

To demonstrate, in Bosnia and Herzegovina, the territorial structure of the state overlaps with its ethnic composition and the principle of parity. Thus, two-thirds of representatives in the House of Representatives at the central level are elected from the Federation of Bosnia and Herzegovina (Bosniaks and Croats) and one-third from the Republic of Srpska (Serbs) (Sahadžić 2019: 61). In Belgium, the German-speaking community does not have the same powers as the Dutch-speaking and the French-speaking communities do, as it cannot exercise language competences beyond the use of language in education. It nevertheless exercises some regional competences, which the Walloon Region has transferred to it (Dumont et al. 2005: 48, 49) (Wouters, Van Kerckhoven, and Vidal 2014: 8-9). Because Quebec applies civil law three out of nine judges of the Canadian Supreme Court are from Quebec (Gagnon and Garon 2019: 94). In Ethiopia, ethnic communities that are territorially embedded enjoy more powers than ethnic communities without their own state (Fessha and Bezabih 2019: 149-150). The Kurdistan Region that controls oil and gas reserves in Iraq (Dirri 2019: E-92-E-121) receives broad fiscal powers (Bammarny 2019: 279-280). Aceh in Indonesia is authorized to apply



Islamic law (Butt 2019: 247). In Italy, regions with special status negotiate their competences and finance bilaterally with the central level, making them subject to different dynamics of competence or resource distribution (Palermo and Wilson 2014: 511). The seat allocation in the first chamber of the Malaysian parliament is based on the size of the population. However, there is a guaranteed minimum threshold for Sabah and Sarawak (Salleh, Puyok, and Bagang 2019: 328). The Spanish constitution provides for two main routes to regional autonomy – a fast track for historic regions and a slow track for other regions (Swenden 2006: 63) – thus creating an optional autonomy system for the regions (López Guerra 1995: 171 cited in: Almendral 2012: 91). Apart from various fiscal agreements that have been established for the Basque Country and Navarre (Watts 2008: 130), the Basque Country and Catalonia have the power to organize their own police forces and to regulate the use of language, while Catalonia has powers over its penitentiary system (Bossacoma Busquets and Sanjaume-Calvet 2019: 452). In the United Kingdom, even though tax regulations are under central control, Scotland can adjust the basic income tax. Northern Ireland can legislate employment, and Wales has executive powers to address the use of the Welsh language (Swenden 2006: 66-67) (Dickson 2019: 418).

In the face of autonomy claims, ‘asymmetric federalism is a powerful and strategic mechanism for the governance of divided societies’ (Nicolini 2015: 60). To address diversity, constitutional asymmetries need to involve institutionalized conflict resolution, competition, and cooperation (Burgess 2009: 21). This raises the problem of whether and how these aspects could be properly addressed. Observations of existing asymmetrical multi-tiered multinational states suggest that there are three main groups of constitutional asymmetries. Accordingly, asymmetrical solutions can be divided into three groups.^{x1}

- One group refers to the legally embedded differential *status* of one or more sub-national entities within multi-tiered systems. This dimension concerns whether the distinct status of the specific sub-national entity is formally recognized, as well as whether it is provided with institutional and procedural autonomy, guarantees of representation and decision-making authority in institutions at the central level,



involvement in constitutional reform procedures, veto powers, and specific safeguards for the protection of autonomy.

- A second group of asymmetrical solutions involves the *distribution of power and competences* among sub-national entities in the multi-tiered system. It concerns whether any specific sub-national entity enjoys a different set of competences, differences in techniques of allocation of powers, the existence of an 'opt-in' or 'opt-out' mechanism, an opportunity to begin exercising autonomy at a different speed, and the power to formulate certain measures enforced within the sub-national entity.
- Finally, a third group refers to the extent to which and level at which specific sub-national entity enjoys *fiscal autonomy*. It questions whether any specific sub-national entity has the power to raise taxes, the discretion to set bases and rates for major taxing powers, the power to raise revenues, responsibility for spending capacity, reliance on transfers, and budgetary control over its borrowing.

3.4 What makes a multi-tiered multinational asymmetrical system?

According to the framework described above, there are three main features of a multi-tiered multinational asymmetrical system: the multi-tiered character of the system, multinationalism, and constitutional asymmetry. The first feature implies the existence of at least two tiers of government, the presence of sub-national entities with law-making power, and evidence that the central government is mixed with sub-national entities. The second refers to territorial differences based on language, religion, culture, and ethnicity. Finally, constitutional asymmetry is embodied in any variation in status among sub-national entities identified in constitutional/legal texts.

4. An alternative for the Disputed?

Recent decades have seen a growing trend toward a common opinion among Israelis and Palestinians that the two-state solution has reached a point of no consensus (Thrall 2016: 432) (Sandler 1988: 59). In addition, an inclination to support the one-state solution in the Israeli-



Palestinian dispute remains encouraged only by Palestinians living outside of Palestine (Kelman 2011:, 28). This is further complicated by the fact that some parties advocate excluding the Gaza Strip from the one-state deal (Thrall 2016: 433).

The challenge of reaching a bargain carries a number of well-known limitations. First, Israelis and Palestinians are not evenly balanced in the state of affairs. This is largely because Israelis have a country, a strong military, and they encourage Jewish people from abroad to settle in Israel. In contrast, Palestinians have no country, no military, they live in two separated territories under the authority of Israel, and they are disconnected from their scattered population abroad (Mendel 2016). In addition, the Palestinian National Authority in the West Bank could be characterized as fragile and incapacitated, and it is losing support among Palestinians (Habib 2016: 198). Moreover, Hamas virtually controls the Gaza Strip, positioning itself as equivalent to the Palestinian National Authority (Habib 2016: 194, 196), thus effectively splitting the Palestinian government in two. This ultimately implies an initial objective of identifying other possible choices and alternative options for resolving the Israeli-Palestinian conflict (Habib 2016: 193), while also implying that future prospects should conform to the changing reality (Mendel 2016: 443).

One of the options includes the concept of constitutional asymmetries. This approach offers certain advantages for both sides. The concept of constitutional asymmetries shows that the *numerical balance*, highlighted in the concept of bicomunalism^{xii}, *is of little importance*. After all, the Israeli minority lives in the West Bank (14%) while the Palestinian minority lives on the Israeli territory (21%) and in Jerusalem (37%) (Reybrouck 2017). The concept offers *bargaining flexibility*. For Israelis, access to constitutional asymmetry would create flexibility in the institutional design process, including processes of sequential accommodation (Wolff 2011: 24). For Palestinians, the choice for constitutional asymmetries implies the rejection of coercive homogenization, thereby preserving the power to choose. It also prevents the system from falling into decay (McGarry and O'Leary 2012: 40). Constitutional asymmetries offer *adaptive solutions*. Solutions could be suited to reaching a turning point with regard to agreements concerning any future relationship, regardless of whether these solutions are transitional or permanent. The customized accommodation of diversity is a central element of



the concept of a multi-tiered multinational system with asymmetrical features.^{xiii} This should give both the Israeli and the Palestinian sides an incentive to engage in a dialogue. Finally, constitutional asymmetries offer a different approach to *stability* despite *complexity*. For both sides, the dynamic nature of multi-tiered multinational systems does not necessarily mean that they are unstable, although it would be advisable to strive for dynamic balance within the system (Benz and Broschek 2013: 382). This is because, in asymmetrical multi-tiered multinational systems, stability rests on the mutual relationship between a complex set of actors and processes (Zuber 2011: 548). Complexity can act as a shock absorber, as complex arrangements are likely to disperse tension throughout the network in different directions (Fitzmaurice 1999: 105 cited in: Bauböck 2001: 16) therefore transforming high-level concentrated tension into a set of low-level adaptive tensions that are less demanding to manage. Given the threat of a ‘slippery slope’, constitutional asymmetries are likely to pose a moderate threat to the stability of the system (Bauböck 2001: 19).

The present study does not concentrate on the backward focus question of why the previous proposals did not work. It concentrates on the forward focus question of what is needed to move forward. Therefore, it focuses on the present and future through the principles of constitutional asymmetries. This allows at least partial overcoming of what Nicolini (2016) calls ‘imbrications’ or common traits that generate flaws within the system (289). Usually, the flaws are settled in constitutions (Nicolini 2015: 76). However, historically, identity conflicts have also been settled through agreements, for example, the Dayton Peace Agreement for Bosnia and Herzegovina (which contains the Constitution of Bosnia and Herzegovina) and the Good Friday Agreement between the United Kingdom and Irish governments (which became a part of constitutional law of the United Kingdom).

One significant aspect that could play a decisive role in achieving common ground for the parties in the Israeli-Palestinian dispute is the foundation of the State of Palestine (Thrall 2016: 434). This could serve as a starting point in negotiating Palestine’s specific position within Israel. Important variables concern territorial and identity aspects and attempts to resolve them (Nicolini 2015: 72-73), namely territorial demarcation and mutual recognition.



Territorial demarcation would prevent overused ‘random bordering’. Setting up random borders is not only a trend between the Israeli and Palestinian territories but also within the Palestinian territory (Braverman 2010: 264-265). It is closely associated with dual administration and the presence of Israelis in Areas B and C in the Palestinian territory (Cristiani 2016: 318, 335). The Palestinian territory could be demarcated either as a single sub-national entity or as two sub-national entities, taking into consideration who *de facto* controls the West Bank and the Gaza Strip. The competitive position between Hamas and the Palestinian National Authority implies the future of the Gaza Strip and the West Bank as two tiers. This might appear as an attempt to dilute the Palestinian position. However, it involves a degree of counterintuition. Palestinians fear of internal manipulation and fresh external influence (Sandler 1988: 61) while Israelis argue against a full-fledged Palestinian state (Sandler 1988: 59). A specific status protects Palestinians from future external influence and offers a new discourse to Israelis. The city of Jerusalem, a fundamental obstacle to Israelis and Palestinians, could be established as a capital region (Reybrouck 2017) or a city district in joint ownership.

What is striking is that Israelis and Palestinians have existed next to each other without mutual recognition. Refusal of mutual recognition has evolved into a dehumanized form of communication – bureaucratic on the side of Israelis (Braverman 2010: 275) and raging on the side of Palestinians. The multi-tiered approach offers opportunities beyond simple territorial demarcation. It concerns the territorial recognition of groups with distinct identities, in this case through asymmetrical constitutional solutions (Máiz 2004: 64) (Gagnon and Laforest 2012: 86). Mutual recognition allows recognition and protection of diversity which works against the centripetal forces within the system (Badia and Requejo 2012: 7).

Territorial and identity demarcation does not mean Israelis will disconnect from the West Bank (Braverman 2010: 266). On the contrary, it is not far-fetched to allege that that supporting different interests increases mutual respect and therefore becomes a stabilizing factor. Similarly, Palestinian appreciation can be poured into a legitimizing factor. This would mitigate the arguments that an agreement between the groups is not feasible (Sandler 1988:



60). On the other hand, failure to accommodate the claims of sub-national entities might stimulate centrifugal forces that would drive the system apart (McGarry 2007: 112).

Two tiers, the Gaza Strip and the West Bank, would receive the power to organize their legislative and executive bodies. Representation of Palestinians from the Gaza Strip and the West Bank in the central level legislature would be based on a guaranteed minimum threshold. A number of seats would be reserved for Israelis from the West Bank and Palestinians from the Israeli territory.^{xiv} Caucuses would be split into three, Israeli and two Palestinian (from the Gaza Strip and the West Bank). A decision-making process would be based on a majority voting. The Gaza Strip and the West Bank would receive specific locks for the protection of territorial autonomy. A veto for the protection of group rights would be an option for both, Israelis and Palestinians. The central level would be authorized to oversee the content of the decisions made by legislative and executive bodies in the Gaza Strip and the West Bank. The participation of Palestinians from the Gaza Strip and the West Bank in the central level executive body would be based on a guaranteed number of ministers and deputy ministers. A decision-making process would include a veto for the protection of group rights.

The division of powers and competences would include differences in the technique of allocation. The joint institutions at the central level would exercise usual powers and competences. A specific set of powers and competences, for example, with regards to language, culture, education, and religion would be allocated to the Gaza Strip and the West Bank. Regarding the (im)migration, police, and army, interim solutions would be applied. For Israelis, the right to return would still exist under mutual agreement, whilst for Palestinians, the right to enter the Israeli territory would be determined by sensible conditions. Police and armed forces could exist separately, with a strategy to incorporate them. An opt-in/opt-out rule would allow the central level and the tiers to allocate powers and competences differently. This would also help, for example, to the West Bank to move forward if the relationship between the central level and the Gaza Strip is strained.

Eventually, the Gaza Strip and the West Bank could earn elements of fiscal autonomy. For example, they could be in charge of rates and bases for major taxing powers. Because the



stability of the system is based on increasing economic development, putting Palestinians in charge of resources might weaken the support to Palestinian Liberation Organization.

Finally, Jerusalem would be governed through the elements of power-sharing and power dividing (Reybrouck 2017). In legislative and executive bodies, the Palestinian minority would have a guaranteed minimum threshold. Each group would be authorized to regulate matters of their exclusive interest (language, culture, education, and religion). Palestinians in Jerusalem would be given autonomy to choose between regulations applied in the Gaza Strip and the West Bank. Both sides would be authorized to exercise a veto if they would fear decisions would have identity-related effects.

It is important to recall that, on the whole, these institutionalized asymmetrical solutions represent a comprehensive set of constitutional asymmetries in states in which constitutional asymmetry is applied broadly with regard to sub-national entities. Should they aim for constitutional asymmetry, neither side (i.e., neither the Israelis nor the Palestinians) should aim for an immediate and/or entire bundle. Constitutional asymmetries do not come in neat packages; they are rather negotiated over time. For institutionalized asymmetrical solutions to work, Palestinians would first have to decide whether they would prefer to approach negotiation as a single sub-national entity or as two separate entities (i.e., the West Bank and the Gaza Strip). It is important to note that the latter option need not be detrimental. On the contrary, if no consensus can be reached, both entities could opt to negotiate with Israelis at their own pace, but obviously with the prospect of achieving the same goal. If these conditions are met, the various sides could agree to define particular asymmetries about which to negotiate, in addition to specifying instruments and mechanisms for doing so.

5. Conclusion

One significant point raised in the previous sections is that alterations in favor of asymmetry are often constitutionally entrenched in multi-tiered multinational systems, ranging from basic to extreme demands. Where demands do emerge, it is fairly certain that the asymmetrical state design is enforced in response to multinationalism (Weller 2011: 1)



(McGarry 2011: 148). This is especially evident in the systems discussed above. Together, the arguments explored in this article support the assertion that, if a claim for the institutional accommodation of multinationalism is strong enough, one option would be to redesign the state in an asymmetrical model (Máiz 2004: 7). At the same time, the arguments confirm the notion that, given that all systems possess the potential for claims based on differences, constitutional asymmetries are unlikely to emerge only in federal systems. They may be disguised in any type of system (Palermo 2009: 17-18).

Another significant point raised in the previous sections is that this framework can be explored as a starting point for re-addressing the Middle East peace process. This article presents an evaluation of the relationship between multi-tiered systems, multinationalism, and constitutional asymmetries, with the objective of proposing an alternative concept for approaching the Middle East peace process. In addition, it explores pathways along which sub-national entities in multi-tiered systems build their claims to autonomy based on their distinctive identities, while simultaneously provoking asymmetrical constitutional patterns that could identify the conditions under which the alternative concept could be useful. The arguments presented here are obviously open to criticism, however, as they are intended solely to reflect a broad concept for further thinking additional feedback is most welcome.

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^I Often associated with the 'Bi-national Solution'.

^{II} Elazar is not alone in his attempt to consolidate exercising forms of federalism. For example, Delmartino refers to these forms as 'federal-type arrangements' (Delmartino 2009: 37).

^{III} Friedrich actually refers to these two directions as integration and differentiation (Friedrich 1968: 176-177). However, to avoid a link and therefore confusion with traditional federal theory that uses the term integration closely related to unitary systems, I use the term 'association'. While association tends to be equated with heterogeneity, integration involves homogenization. In addition, while devolution is linked to decentralization and delegation, differentiation refers to separation.

^{IV} Tierney also uses a number of terms refer to groups (Tierney 2006: 5).

^V This argument is open for discussion. While Livingston claims that this is absolutely the rule (Livingston 1952: 85), Burgess claims that interests may be pronounced by territorial and non-territorial actors (Burgess 2006: 143).

^{VI} For instance, Requejo states that members of these groups recognize themselves based on cultural patterns, the sense of historical distinctiveness, and their willingness to maintain their diverse positions within the political framework (Ferran Requejo 2001a: 41).

^{VII} Usually referred to as 'coming together' federations (Stepan 2004: 33-37).



VIII Similar argument is offered by Piattoni (Piattoni 2010: 7).

IX The author of the study acknowledges existence of other definitions of multinationalism and multinational states. However, they are of a restrictive matter to further research. For instance, the (Resnick 2004: 43) definition is limited to linguistic or cultural communities. McGarry and O'Leary fail to connect differences to significant groups that may use them to seek political autonomy (McGarry and O'Leary 2012: 22-23).

X Asymmetries emerge in two different types. *De facto* or political asymmetry is defined as practices and relationships based on linguistic, religious, cultural, ethnic, social, economic, political, and other differences between sub-national entities, and between sub-national entities and the central level. *De iure*, constitutional, or formal asymmetries are differences embedded in constitutional and legal processes, producing an unequal positioning of sub national entities under the law. When *de facto* asymmetries are entrenched in the legal framework, they materialize as *de iure* asymmetries, formally treating subnational entities differently under the law (Watts 1999: 63-66) (Burgess 2006: 216-217) (Agranoff 1999a: 16) (Swenden 2006: 48, 63) (Popelier and Lemmens 2015: 80) (Weller 2011: 1) (McGarry 2011: 148) (Bermeo 2004: 263) (Basta Fleiner and Gaudreault-DesBiens 2013: 173) (Stepan 2004: 40).

XI Sahadžić gives a comprehensive overview and explanation of the types of constitutional asymmetries and the indicators of constitutional asymmetry (Sahadžić 2017: 228-229).

XII Schmitt (1988), for example, gives a comprehensive account of bicomunalism (33-35).

XIII Burgess claims similar (Burgess 2009: 34).

XIV Detailed solutions are beyond the scope of this study, however, guarantees of representation and participation reserved for national minorities should not be overlooked in comprehensive proposals.

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**Climate change, food security and rights of peasants:
how this complexity is addressed in the international
legal framework.**

by

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Abstract

Climate change will probably constitute the most serious security challenge that humanity will face in 21st century. The extreme complexity of both the causes and the consequences of this phenomenon makes it very hard to be studied in overall terms. The aim of this paper is indeed to begin to tackle this complexity, starting by analysing how does the international legal framework addresses the relationships amidst climate change, food security and rights of peasants. The focus on food security and rights of peasants is not arbitrary. Food security is one of the first security dimensions that risks being jeopardised by climate change, as well as peasants are one of the categories of workers whose security and rights are going to be most severely challenged. If we add to this the fact that agri-food sector is one of the most polluting one in terms of GHGs emission and impact on climate change, we start to make sense of the complexity of the picture.

Key-words

Climate change, Food Security, Rights of Peasants, UNFCCC, Kyoto Protocol, Paris Agreement, UNDROP



1. Introduction

If you increase the temperature of an isolated physical system, at a constant volume, there will be an increase of its entropy. In other words, the increasing energy of the system will make every phenomenon within it more extreme and unpredictable. Then, what does it happen if the system we are referring to is the Planet in which we live? A partial answer to this question was already provided in 2008 by the EU¹, that used to define climate change as a ‘threat multiplier which exacerbates existing trends, tensions and instabilities’ (Climate change and International Security, 2008).

The rapid shift in climate’s behaviour is under anyone’s eye as well as the effects of climate change on our biosphere rise always more concern. The most important alteration in terms of international politics that the climate change will cause, will be probably the beginning of processes of political destabilizations, climate conflicts and mass migrations, that will be caused by dramatic global changes as soil desertification, streams and rivers drying but also increasing floods and storms. These changes, that continue to get worse (H. Fountain, 2019), already make one quarter of ice-free lands degraded (V. Masson-Delmotte, 2019) and force people to move because lands get sterile and unusable for crops. Still, given that a large part of the population of developing and third world countries is formed by farmers, e.g. in India agriculture employed 59% of the country's total workforce in 2016 (World Travel and Tourism Council, 2017) and given that the most direct and severe effects of climate change will affect the agricultural sector (Cumhur Aydinalp and Malcolm S. Cresser, 2008), it is evident that factors as climate change, food security and rights of peasants are strongly intertwined. Nevertheless, is this link considered in the international legal framework?

The aim of this paper is to understand how the complex relation among climate change, food security and rights of peasants is addressed in the international legal framework. In order to provide a satisfactory answer to the research question, this paper will firstly clarify the concept of food security it will refer to. Secondly, it will try to understand if and how treaties as the UNFCCC (1992), the Kyoto Protocol (1997) and the Paris Agreement (2015), deal with the issue of Food Security. Thirdly, it will examine the



UN declaration on the Rights of Peasants (2018), focusing in particular on article 18. Finally, the conclusions will be drawn.

2. Which Food Security?

First of all, the first formulation of Food Security was provided by the 1974 ‘Universal Declaration on the Eradication of Hunger and Malnutrition’^{II}, that defined it as ‘availability at all times of adequate world supplies of basic food-stuffs’ (art.12). This originally supply-based definition of food security was then enlarged and deepened, also thanks to the contribution of the Nobel laureate Amartya Sen, that in his work ‘Poverty and Famines’, published in 1981, introduced the theory of ‘entitlement’. According to the Indian economist and philosopher, the problem of hunger is not merely related to availability of food: ‘The mere presence of food in the market place does not entitle a person to consume that food.[...] What we can eat depends on what food are we able to acquire’ (Sen A. 1981). Accordingly, the notion of food security that this paper will take into account is the one provided by the ‘Rome Declaration on World Food Security’ resulting from the World Food Summit (WFS) of 1996^{III}, stating that ‘food security exists when all people, at all times, have physical and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life’. This definition of food security will be used as a benchmark in this paper, since it is the one from which the four pillars of food security emerged. Indeed, it does not only refer to the quantitative dimension (availability of food), but also the logistic and financial dimension (access to food), the non-food factors (utilization of food), and the temporal dimension (stability over time).

3. Climate Change and Food Security addressed by the international legal framework

Secondly, one should try to understand how the main international treaties on climate change deal with the issue of food security.

The United Nation Framework Convention on Climate Change (UNFCCC)^{IV} is an international environmental treaty, adopted on 9th May 1992 and signed by 165 parties, that become effective in 1994 (when it reached the minimum number of 50 ratifications). The



analysis of this treaty is considered consistent with the aim of this paper, since it is with the UNFCCC that a new institutional framework within which addressing the issue of global climate change, i.e. the mechanism of the Conference of the Parties (COP), was established. As long as the UNFCCC is considered, we can observe that a reference to food is just present once in article 2^V, and it exclusively pertains to food production. ‘Article 2 [...] paid much more attention to physical and biological vulnerabilities as sources of danger, and rather less attention to economic issues. Ethical and cultural considerations have been nearly absent’ (M. Oppenheimer and A. Petsonk, 2005). Clearly, three of the four pillars of food security are not mentioned in Art.2, but this is not surprising since the UNFCCC was adopted in 1992, four years before the World Food Summit of 1996. By contrast, the reference to food present in Art.2 is much closer to the one given in the ‘Universal Declaration on the Eradication of Hunger and Malnutrition’ of 1974, since it is supply-based and hence mainly focused on the availability of food.

The Kyoto Protocol^{VI} was adopted with COP 3 in 1997, and although it was immediately signed by 84 parties, it became effective just in 2005. This document is considered as of major importance, given that it is the first (partially) binding treaty produced within the UNFCCC framework. Although no mention of food is present in the Kyoto Protocol, there are references to agriculture. However, while Art.4 of the UNFCCC considers the sector of agriculture as both causing pollution (All parties [...] shall [...]reduce or prevent anthropogenic emissions of greenhouse gases[...] including agriculture sector) and needing to be protected from climate change (All parties [...] shall [...]cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for agriculture [...] particularly in Africa, affected by drought and desertification, as well as floods), the Kyoto Protocol just considers the first of the two aspects. Both art.2^{VII} and art.10^{VIII} of the Protocol, as a matter, refer to agriculture as long as they are focused in the reduction of GHGs emission. Also, the literature on the Kyoto Protocol mainly stresses the importance of acting on agriculture so to mitigate climate change, instead of mitigating climate change in order to improve the agricultural yield (Dumanski, J., 2004).

The Paris Agreement^{IX} was adopted with COP 21 in 2015 and it became effective in 2016, it has reached 195 signatures and 189 states have become party to it. It is object of our analysis, given that, up to date, it is the last treaty that was developed in the COP



system. Concerning the Paris Agreement, references to food are both present in the Annex of the agreement and in Art.2. Although in the Annex there is an explicit reference to Food Security, ending hunger and food production (The parties of the agreement, [...] recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change [...] have agreed as follows: [...]), among the articles of the agreement there is no reference to food security but just to food production in Art.2^x. This article acknowledges the bidirectional nature of the relationship between food production and climate change, since it deals with food production both by underscoring the urge to ‘adapt to the adverse impacts of climate change’ and the necessity to foster ‘low greenhouse gas emissions development, in a manner that does not threaten food production’. However, Art.2 just covers one of the four pillars of food security, and does not provide any measure related to food access, utilization and stability.

So far, it has been established how the issue of food security is addressed in the three main treaties on climate change of the last three decades, and it has been discovered that in this context just a partial view of food security has been taken into account (mostly focused on the element of food production and food supply). Moreover, as long as the relationship between food security and climate change is concerned, the paper acknowledged that both the UNFCCC and the Paris Agreement bear in mind that the two phenomena are mutually constitutive and mutually reinforcing. However, given the important repercussion that climate change and new challenges of food security pose to people working in rural areas, and given that the aim of this paper is to understand how this complexity is addressed in the international legal framework, a fourth document will be examined: the 2018 ‘UN Declaration on the Rights of Peasants and Other People Working in Rural Areas’.

4. Climate change, food security and rights of peasants in the UNDROP

Although peasants, as human beings, enjoy all human rights enshrined in the Universal Declaration of Human Rights^{xi}, their fragility remains of particular concern, due to the high level of extreme poverty, food insecurity and discrimination they suffer (see Christophe Golay, 2013). This situation firstly led the global movement ‘La via



Campesina^{xii} to adopt the ‘Declaration on the Rights of Peasants – Women and Men’ in 2008. Then the UN moved from this document to develop the ‘UN Declaration on the Rights of Peasants and Other People Working in Rural Areas’, that was adopted by the Human Rights Council in 2018. The ‘UNDROP’ was written considering that peasants suffer disproportionately from poverty, hunger, malnutrition and ‘from the burdens caused by environmental degradation and climate change’ (UNDROP, Annex, 2018), contingencies that led to an increasing number of forcibly displaced peasants, and to an high incidence of suicide among them (see UNDROP, Annex, 2018). Therefore, given the massive impact of climate change on the life of peasants (see H. Pakrashi, 2014), the UNDROP cope with the climate issue, dealing with it in article 18^{xiii}. In particular, the article entrusts to states the responsibility to ‘comply with their respective international obligations to combat climate change’ and gives peasants the right to ‘contribute to the design and implementation of national and local climate change adaptation and mitigation policies’ (UNDROP, Art.18). The UNDROP has the merit of recognizing the necessity to mitigate climate change in order to both improve the agricultural yield and to handle the problem of food security. It sheepishly tries to establish the basis of a system of multi-level governance^{xiv} in which states, ‘in partnership with peasants and other people working in rural areas’ (Art.15) are called to participate to the policy making process. Last but not least, it provides us a picture in which problems of climate change, food security and rights of peasants are addressed together.

However, we can observe that the Declaration of 2018 does not describe the way in which peasant activity affects climate change, and more in general, it assigns no responsibility nor obligation to peasants. The Declaration ignores that the fixing of some ideal best practices for farmers could reduce the environmental impact of agriculture, could increase the agricultural yield and would improve peasants lives in the long run. Besides, the UNDROP naively overlooks that most of peasants whose rights are violated come from states that will be hardly able (or eager) to put in place all the measures listed in the Declaration. Indeed, although the UN Declaration tries to include actors as ‘peasants and other people working in rural areas’ in the policy making process, it evidently considers national governments as major actors maintaining their centrality, and it fails to establish a comprehensive and effective system of multi-level governance. Thus, the fact that a UN Declaration fixes a particularly far-reaching and ambitious standard is nothing new, but



given the previous considerations, there would be good reasons to give not just states but also other stakeholders (i.e. private actors and transnational organizations) the task to implement these rights, within a better organized and encompassing legal framework. By doing so, we would not undermine the ambitious objective of the Declaration, but we would also succeed in having a better political output in the long run.

5. Conclusions

In conclusion, it is possible to state that treaties on climate change just consider a restrictive interpretation of the concept of food security. The Kyoto Protocol in particular does not even make any reference to neither food security nor food production. It only refers to agriculture as long as it aims at reducing the environmental impact associated with crop production. The Paris agreement constitutes an innovation in this regard, since it makes a direct reference to food security (although exclusively in the Annex) and, as well as the UNFCCC, it acknowledges the bidirectional relation that ties food security to climate change. Finally, the UNDROP is hardly able to provide a comprehensive outline of the correlation among climate change, food security and right of peasants. Grater efforts should be made to try to find a more appropriate solution to the issue of the endangered rights of peasants. This essay claims that, given the transnational nature of the problem at stake, the excessively state-centred approach adopted by the UNDROP should leave room for a different one, focused on the establishment of a comprehensive system of multi-level governance. Having said this, the UNDROP remains a document of major importance since it gives states the responsibility not only to respect, but also to protect and to fulfil the rights of peasants. Even more important, the declaration gives for granted that, to address the rights of peasants, it is necessary to consider the relationship that connects those rights to climate change and food security.

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¹ The first European document taking climate change out of the environmental field and put it in the security field is the paper commissioned by the High Representative (Mr Javier Solana Madariaga) and the European Commission of the European Council, 'Climate change and International Security', in 2008. You can access the paper through the following link: https://www.consilium.europa.eu/media/30862/en_clim_change_low.pdf.



^{II} The 'Universal Declaration on the Eradication of Hunger and Malnutrition' was adopted on 16 November 1974, by governments who attended the 1974 World Food Conference that was convened under General Assembly resolution 3180 (XXVIII) of 17 December 1973. It took place in Rome and 135 states participated to its formation. Link of the Declaration: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/EradicationOfHungerAndMalnutrition.aspx>

^{III} The World Food Summit took place in Rome, Italy between 13 and 17 November 1996. It resulted in the adoption of the Rome Declaration on World Food Security. Link of the Declaration: <http://www.fao.org/WFS/>

^{IV} The UNFCCC is an international environmental treaty adopted at the (UN organized) Earth Summit in Rio De Janeiro, 1992. Thanks to it, the parties of the Convention meet since 1995 in the so called 'Conferences of the Parties' (COP). Link of the treaty: <https://unfccc.int/resource/docs/convkp/conveng.pdf>

^V Art.2, UNFCCC. 'The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner'.

^{VI} The Kyoto Protocol, adopted at the COP3 in 1997, is one of the most important environmental treaties ever put in place. Although criticized by many experts and scholars of being not sufficiently ambitious, the Protocol has the merit of fixing binding targets for states listed in the famous 'Annex B'. Link of the treaty: <https://unfccc.int/resource/docs/convkp/kpeng.pdf>

^{VII} Art.2.1.a.iii, Kyoto Protocol. 'Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall implement and/or further elaborate policies and measures in accordance with its national circumstances, such as Promotion of sustainable forms of agriculture in light of climate change considerations'.

^{VIII} Art.10.b.i, Kyoto Protocol. 'All parties [...] shall formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change. Such programmes would, inter alia, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change'.

^{IX} The Paris Agreement, adopted at the COP21 in 2015, is another outstanding international environmental treaty. It introduced an expert-based committee aimed at promoting compliance with the provision of the agreement itself. However, differently from the Kyoto Protocol, the Paris agreement did not introduce any binding target for the parties. Link of the Agreement: https://unfccc.int/sites/default/files/english_paris_agreement.pdf

^X Art.2.1.b, Paris Agreement. 'This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production'.

^{XI} The 'Universal Declaration of Human Rights' is a document of major importance that was adopted in 1948 by the UN General Assembly as Resolution 217. Although being a non-binding document, it had a major influence on subsequent developments of international treaties and international law in general. It is son of the post-WW2 culture, and this is already evident in article 1, stating that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'.

^{XII} 'La via Campesina' is a global movement composed of 182 local and national organizations operating in 81 countries (updated to 2018). The movement was founded in 1993 and it defends the rights of (women and men) peasants and an agricultural model based on a sustainable agriculture. La via Campesina moved to challenge the ideology of neoliberalism in global economics, and also coined the term 'food sovereignty'.

^{XIII} Art.18.3, UNDROP. 'States shall comply with their respective international obligations to combat climate change. Peasants and other people working in rural areas have the right to contribute to the design and



implementation of national and local climate change adaptation and mitigation policies, including through the use of practices and traditional knowledge’.

^{XIV} The governance perspective is a shared political and social research agenda. In this framework, the concept of multi-level governance was introduced by G. Marks and L. Hooghe, and, in its broader definition, it is described as a governance system based on the interplay of both public and private actors and transnational organizations moving on different levels, that also causes overlapping and flexible competences.

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European Integration and Minority Nationalism: a Literature Review and Avenues for Further Research

by

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Abstract

Does European integration impact on minority nationalism? Is there evidence that processes of European integration exacerbate or moderate minority nationalist tendencies in member states? Post-2010 development of the European Union (EU) is characterised by an unprecedented cumulation of crises, generating integration and disintegration tensions in its multi-level governance structure. How do these tensions impact on minority nationalism? Current literature is silent on this issue. Therefore, this review article seeks to survey past and present literature dealing with the complex and ambiguous relationship between European integration and minority nationalism. I find that our present knowledge of this relationship is considerably limited. To remedy this deficit, this article suggests several avenues for further research. Future research should enhance our understanding of whether, how, in which direction and under what conditions current (dis)integration processes occurring at different levels of governance impact on minority nationalism in EU member states.

Key-words

European Union, minority nationalism, substate nationalist parties, multi-level governance, integration, disintegration



1. Introduction

The influence of globalisation on nationalism has been studied since the 1960s. Today, the nationalism of substate entities, so called *minority nationalism*, represents a distinct research area within the field of International Relations and, more specifically given the non-state character of nationalist subunits necessitating substate and cross-country comparisons, of International Studies and comparative politics. Since many nationalist subunits are located in the member states of the European Union (EU), this issue has equally attracted the attention of European Studies. EU member states currently host on their territory some of the world's most active instances of minority nationalism. The independence referendum in Scotland and the attempt to proclaim independence in Catalonia show that the intensity of minority nationalism in the present-day EU has reached high levels. Similarly, other instances of nationalist subunits in the EU, although in a less turbulent way, are currently seeking to lessen their political dependency on the parent state. Growing shares of votes for substate nationalist parties in regional and national elections (Nationalia 2020; Dandoy 2019; Nationalia 2017) and pro-autonomist changes in public opinion (Awan-Scully 2020; Utz 2017) well illustrate this trend.

Research into the relationship between European integration and minority nationalism culminated between the years 2008 and 2010. For more than a decade, the impacts of European integration processes on minority nationalism have not received any significant scholarly attention. In spite of the fact that diverse aspects of minority nationalism in EU member states have been debated in recent literature, further exploration of this complex and ambiguous relationship has been largely omitted. This paper argues that, in the light of the current developments in the EU, nationalist subunits face a changing context and thereby some new dilemmas. Post-2010 occurrences such as the European debt crisis, refugee crisis, rise of Euroscepticism, a member state ultimately withdrawing from the EU, combined with stagnating integration and failed attempts to reform the EU invoke and exacerbate tensions in the multi-level governance structure. The interaction of concomitant integration and disintegration processes happening at different levels of governance may have repercussions on minority



nationalism: they can result in weakening as well as in strengthening substate nationalist claims, with the potential to threaten the integrity of the parent state.

As studying the relationship between the EU and minority nationalism has become relevant again, it is essential to examine the state of knowledge we have on this issue so far. Therefore, this review article serves two purposes. Firstly, to survey and structure past and present research and summarise key findings on the following research questions: How does European integration impact on minority nationalism? Is there evidence that processes of European integration exacerbate or moderate substate nationalist tendencies? And secondly, with regard to the post-2010 context and building on research gaps brought to the forefront by the literature review, to suggest avenues for further research.

This paper is structured as follows. The next section surveys the literature focusing on substate nationalist parties. In this section substate nationalist parties are understood as principal agents purveying the nationalist agenda in political terms. For this reason, works analysing positions of substate nationalist parties towards the EU (or its predecessors) and their strategies in voting arenas at different levels of governance are reviewed here. The paper then proceeds to survey the literature exploring the structural impacts of European integration on the regional level due to the re-allocation of political authority. Works analysing shifts in regional autonomous competences with a direct connection to minority nationalism are of concern in this section. Notwithstanding the culmination of the research towards the end of the 2000s and the subsequent waning of scholarly interest, both sections encompass the pertinent literature up to the present day. Where possible, I aim to position the relevant strands of literature within their respective broader debates. Next, the paper identifies recent works which do not explicitly delve into effects of EU integration processes on minority nationalism, but from which some relevant conclusions can be drawn. Furthermore, although without any reference to the relationship at question, the paper reviews and structures major literature strands examining current aspects of minority nationalism in the EU and its member states. The final section provides a summary of the current state of knowledge and delineates, in the context of the post-2010 developments, five areas of tension within the EU's multi-level governance structure that future research should examine. A framework for analysis is also briefly outlined in this section.



Much scholarship has been written about the relationship of EU-minority nationalism and its underlying mechanisms on an intuitive basis. However, this review article considers only original empirical evidence-based primary research. The considered literature includes qualitative and quantitative works such as original articles, monographies and chapters in edited volumes, written in English, German or French. Despite the fact that this paper strives for comprehensiveness, it cannot be taken as entirely exhaustive. Works on minority nationalism having no connection to the relevant debates and works in other languages were excluded from consideration. Although dozens of substate nationalist movements exist throughout the EU, this paper focuses primarily on the most distinctive and active instances, as these have the highest potential to achieve greater autonomy or secession, hence challenging the status quo.

2. Substate nationalist parties and European integration

The unexpected (re-)emergence of minority nationalism in the developed West in the post-1968 period attracted considerable academic attention. Scholars sought to grasp the links between new and revived self-determination movements and advancing globalisation processes. The puzzle surrounding nationalist, autonomist and secessionist claims in plurinational states in the age of global interdependence, international regimes and economic and political integration is explored in earlier (Esman 1977; Horowitz 1985; Connor 1994; Kymlicka 1995; Moore 2001; Paquin 2001; Sorens 2004; van Houten 2003; Sideri 1997) as well as in later works (Tierney 2015; Davezies 2015; Kernalegenn 2013; Tétart 2009; Gagnon 2014; Zinn 2006).

With the exception of Québec, all major instances of minority nationalism in the West can be found in Europe and, more specifically in the ‘old’ member states of the EU. Since any extension of regional self-rule within the institutional context of Western democracies can be achieved solely through means of negotiation, explicit attention is paid to substate nationalist parties as major purveyors of political change in this respect. There is a broad spectrum of literature engaging with multifarious nationalist (ethnoregionalist) parties¹ in West European EU member states (de Winter and Türsan 1998; de Winter et al. 2018; de Winter 1994; Newman 1994; Fegerholm 2016), providing a detailed account of their genesis, evolution, structure, goals



and strategies. Although contributing with valuable insights into the complex realities of this heterogeneous party family, this strand of literature largely leaves out the European dimension.

The origin of the academic debate on the relationship between European integration and minority nationalism can be traced back to the second half of the 1980s, when scholars started to reflect the changing positions of substate nationalist parties towards the European Economic Community (EEC). Studies from this period (Keating 1988) and from the mid-1990s (Lynch 1996) can be considered pioneering work, as the vast majority of the literature appeared between 2001 and 2010. In the introduction to one of the most fundamental edited volumes on this topic, *European Integration and the Nationalities Question*, McGarry et al. (2006: 8-11) sum up four major factors which account for the increased support for the EU on the part of minority nationalists. In fact, these factors coincide with reasons why the relationship between the processes of European integration and minority nationalism was studied: 1) the post-sovereignist nature of the EU capable of accommodating subnational minorities by means of shared sovereignty; 2) the declining significance of borders; 3) the creation of a political space enabling the participation of non-state actors such as nationalist subunits, hence offering alternative forms of self-determination short of secession; and 4) the adoption of pan-European minority rights conventions, transferring the protecting authority for minorities from the nation state to a supranational entity.

Qualitative studies engaging with the evolution of substate nationalist party positions towards European integration reflect, under great simplification of the domestic political conditions, a common three-stage pattern: 1) a period of animosity or outright hostility during the 1970s caused by the lack of regional representation in the state-dominated EEC and by fear of economic dislocation in the emerging Common Market; 2) a period of gradual change into a highly positive stance induced by reforms related to the Single European Act and culminating in the early 1990s, leading to enthusiastic but vague ideas of ‘full national status’ in Europe, ‘independence in Europe’, ‘Europe of the Regions’ or ‘Europe of the Peoples’ to name a few^{II}, promising other compelling forms of self-determination than statehood; 3) and finally a subsequent period of disillusionment caused mainly by the fact that these post-sovereignist concepts failed to materialise.



This three-stage pattern best fits the observed cases of the Scottish National Party (Elias 2009; Jolly 2007, 2013) and the Welsh Plaid Cymru (Elias 2008a, 2009, 2006; Laible 2008). Although not occurring simultaneously due to the later accession of Spain, it applies almost equally to the nationalist parties of the The Basque Country (Jáuregui 2006). To a much lesser degree, similarities can be found in the cases of Bavaria's Bayernpartei, Sardinia's regionalist parties (Hepburn 2010) as well as Brittany's (Nicolas 2006) and Galicia's (Elias 2009). The 'U-turn' from Euro-enthusiasm to Euroscepticism is also valid for the Northern League (Giordano 2004; Chari et al. 2004). However, strikingly different cases exist which render the application of the pattern impossible: Flemish nationalist parties saw some potential in the external projection of the Flemish nation through the EU's institutional framework. Nevertheless, they perceived the deepening of integration, each to a different degree, as a threat to the protection and promotion of Flemish identity, culture and language and therefore adopted a critical stance (Laible 2001, 2008). As for major nationalist parties in Catalonia, constant support for the EU with no serious fluctuations could be observed (Giordano and Roller 2002).

Cross-country quantitative research corroborates this three-stage evolution pattern. Most distinctively, Massetti's large-scale analysis (2009) reveals that the support of substate nationalist parties for further integration reached its peak during the late 1980s and 1990s, whereas in the 2000s support started to wane and substate nationalist parties across the political spectrum were frequently divided over this issue. More recent works confirm this view. According to Massetti and Schakel (2015), attitudes of substate nationalist parties towards European integration are positively affected by the allocation of structural funds. Interestingly, having no effect during 1994-1999, when the idea of 'Europe of the Regions' was reaching its zenith and when the majority of substate nationalist parties embraced this idea, the relationship became more significant in moments of opinion change, in particular after the 'Eurosceptic turn' in the early 2000s (see also Gross and Debus 2017: 607-609). Put in other words, the support of substate nationalist parties for European integration is deemed to be conditional outside the enthusiastic period.

Some conclusions reached by qualitative studies contradict what is commonly believed about the family of substate nationalist parties. Although party positions display a high variation in



time and place over the past decades, at the aggregate level in comparison with other party families this particular family is supportive of the EU only slightly above the average value. Therefore, not only is the substate nationalist party family on aggregate much less homogenous, but also less Europhile oriented than usually assumed (Gómez-Reino 2013; Jolly 2007, 2013; Ray 1999).

The research on substate nationalist party positions equally explores factors which have a bearing upon the formulation of these positions. In two key multiple-case studies, Elias (2009, 2008a) argues that positions of substate nationalist parties towards European integration are, in fact, considerably nuanced depending on the specific aspect at question. Drawing from the examples of Plaid Cymru, Bloque Nacionaliste Galego and Corsican nationalist movements, she demonstrates that substate nationalist parties clearly differentiate between the general idea of an ever-closer Europe, on the one hand, and concrete realities and policies of the EU (EEC), on the other. In a similar vein, Mitchell and Cavanagh (2001) counter the assumption that substate nationalist party positions are primarily determined by their primordial identities and value orientations. Concluding from a case study on Scotland, Wales and Northern Ireland, formulation of positions on the EU pertains rather to party opportunism in the form of responding to public opinion and seeking opposition to the central government's stance on Europe, both of which substate nationalist parties tactically exploit for their electoral ends. A similar conclusion is asserted in a case study of four peripheral regions in Great Britain and the Netherlands (Mols and Haslam 2008) and is also valid for the Northern League (Chari et al. 2004).

The context of domestic politics impacts on the positioning of substate nationalist parties towards European integration. As presented by Hepburn (2006), in the post-devolution era in Scotland practically all regional branches of state-wide parties had to re-position themselves and articulate a vision of Scotland's future in the EU. Consequently, the position of the Scottish National Party towards the EU evolved in this new context of party competition at the substate and national level and was continuously co-shaped by it. Furthermore, the positioning of substate nationalist parties on various facets of European integration is influenced by their territorial and constitutional demands vis-à-vis the central government (centre-periphery



spectrum) as well as by their regional socio-economic goals (traditional left-right spectrum). Content analyses of election manifestos confirm the considerable diversity of issues in ‘issue packages’ that substate nationalist parties position themselves on along these two spectra (Alonso et al. 2017, 2015; Massetti 2009). Echoing past findings, the most up-to-date study tracing the history of support for EU membership among separatist parties in the Basque Country, Catalonia, Flanders and Scotland situates the main drivers of self-determination claims in the dynamic context of domestic politics (Cetrà and Liñeira 2018).

With the deepening of European integration, the regional level of governance started to interact with the supranational one. Building upon the literature on the interaction between the national level and the regional level governed by minority nationalists (Hepburn 2009; Deschouwer 2009, 2003; Elias and Tronconi 2011), scholars examined how regionalist parties responded to the new opportunities and constraints of the European multi-level governance structure in the pursuit of their territorial demands. Most notably, Hepburn (2010) points out that the existence of vertically connected political and voting arenas influences the positions of nearly all regionalist parties, not only those seeking independence. Comparing regionalist parties in Scotland, Bavaria and Sardinia, she finds that in the EU’s multi-level governance structure independence-seeking parties moderated their ‘radical’ stance over time, whereas regional branches of state-wide parties adopted a more clear-cut position on the territorial autonomy of their regions. What is more, changes in parties’ positions occurred largely in accordance with the three-stage evolution pattern.

Behaviour of substate nationalist parties in the European Parliament (EP) represents another important area of scholarly concern. For this party family the EP has served, since the first direct elections in 1979, as a platform for transnational mobilisation and coordination in the pursuit of territorial and institutional reforms. The most distinct group ever to be formed in the EP by substate nationalist parties was the Free European Alliance. As past studies reveal, the European Free Alliance failed to institutionalise itself as a full-fledged parliamentary group (since 1999 it has been aligned with the European Green Party), and failed to develop a common position or encompass more than a fraction of all the regionalist parties represented in the EP. The reasons for this were the group’s increased fragmentation and differences in party ideological positioning



(Lynch and de Winter 2008; Lynch 1998). Correspondingly, substate nationalist parties are said to vary greatly in the degree of Europeanisation and politicisation of European issues (Gómez-Reino 2018; De Winter and Cachafeiro 2002).

The last strand of literature explicitly connecting substate nationalist parties with the European dimension focuses on the secessionist discourse of separatist parties in Catalonia and Scotland. General notions of the EU and notions of a continuing EU membership represent major reference points in the election manifestos of separatist parties in these two subunits (e.g. Bremberg 2020; Anderson and Keil 2016). These content analyses do not, however, provide any substantial understanding of the relationship under study.^{III}

3. Structural impacts of European integration on nationalist subunits

The rise of the regional level within the framework of European integration constitutes a prominent debate in the literature. There is abundant research into the genesis of the regional level in the EU, shifts in the weight of regions relative to member states (a process termed territorial restructuring or ‘rescaling’), the institutionalisation of regional representation in the EU and the role of regions in the EU decision-making process. These aspects are intensely debated in earlier (Jones and Keating 1995; Bitsch 2003; Conzelmann and Knodt 2002; Marks et al. 1996b; Hrbek und Weyard 1994; Bullmann 1994; Bartolini 2005) as well as in later works (Abels and Battke 2019; Keating 2013; Braun 2018).

Within this broad debate, a specific strand of literature can be discerned exploring the impacts of European integration on autonomous competences of the regional level. Scholars attempt to shed some light on the following conundrum: substate units gain through the integration processes formal and informal representation in European institutions and their weight relative to the central government increases (empowerment). At the same time, the transferral of competencies to the supranational level entails, paradoxically, a loss of regional autonomy (disempowerment). This effect, also dubbed ‘competence overlap’ in the literature, is caused by the fact that in the state-centered EU central governments serve as ultimate gatekeepers in Europeanised policy areas previously reserved to subunits. In the Council, central



governments bind the whole state and in the case of regional non-compliance enforce EU regulations, hence reducing the role of regions to implementing EU legislation. The more autonomy the subunits possess, the more pronounced this effect is. It is important to note that the upward transferrals of competences occurred mostly without the subunits' consent. For this reason, the supranationalisation (Europeanisation) of previously decentralised policy areas may generate frictions between the regional and national level of governance. Past empirical studies confirm that the EU has both enhancing and constraining effects on the decision-making process of selected municipalities and regions (Fleurke and Willemse 2007a, 2007b).

It is well-known that nationalist subunits commonly enjoy a considerable degree of self-government. Bearing in mind the relationship under examination, it is vital to address the question of whether minority nationalists seeking emancipation from the central government perceive the loss of autonomous competences induced by European integration as a threat, fuelling anti-EU sentiments. Existing literature remains, however, completely silent on this matter. In the only contribution linking regional disempowerment with a nationalist subunit, Bourne (2003) argues that European integration, to a considerable extent, indeed encroached on the decentralised competencies of the Basque Autonomous Community. Nevertheless, she does not conjecture any causality between the encroachment and Basque nationalism.

Although not referring explicitly to nationalism, several studies discuss the effects of regional disempowerment in those EU member states which accommodate one or more nationalist subunits. The most studied case is the federation of Belgium: in the Council in Europeanised policy areas, two subunits with the most extensive self-rule of all EU member states are forced to adopt a shared national position, thus renouncing their hard-won autonomy (de Becker 2011; Hooghe 1995a; Kerremans and Beyers 1997; see also Laible 2001). Since Eurosceptic moods in Flanders are barely alluded to in these studies, no solid conclusions can be drawn about the relationship between the transferral of competences and minority nationalism. According to Palmer's two-case study (2004), inner-state tensions produced by upward competence shifts largely depend on the character of the domestic political system and the moment of transferral. The federal government of Germany was not afraid of giving up sovereignty, whereas the German Länder, which are granted extensive autonomy, were historically very hesitant. As



regards the United Kingdom, the central government was highly anxious about transferring competences, whereas its constituent nations were not – they achieved devolution only in 1997, when the majority of ‘decentralisable’ competences had already been transferred (Europeanised). Thus, no tensions between the regional and national level over regional disempowerment were observed.

Within the debate on European integration and the regional level, some scholarship investigates the impact of the EU’s multi-layered structure on social identity dynamics. Individual attitudes towards European integration in peripheral regions are said to be shaped by comparative identity processes. Studies exploring the interaction of regional, national and supranational identity in Scotland, Wales and Northern Ireland show that the presence of a European identity encourages and intensifies regional self-identification contrasting the national identity (Carl 2004). Conversely, when regional identity is made salient to individuals, they tend to identify positively with the EU and oppose the Eurosceptic stance of the central government/nation state (Mols et al. 2009). In either way, a complementary European identity does not challenge the legitimacy of the nation state.

The character of the regional identity influences significantly the level of individual attachment to the EU. Works measuring individual attachment to the EU at the regional level reveal some interesting findings on this issue. Individuals having an inclusive (nested) regional identity display higher levels of pro-Europeanism than individuals with an exclusive (parochial) regional identity. An exclusive regional identity is therefore deemed to have a dampening effect on citizens’ support for the EU (Chacha 2012; Brigevid 2016). Large-n cross-country analyses corroborate this view. An exclusive regional identity, if not explicitly combined with a supranational identity, lessens support for the EU. Most surprisingly, individuals in minority nations are less supportive of the EU than individuals with inclusive and exclusive regional identity. On aggregate, distinctive regions and minority nations express the least pro-European attitudes of all analysed groups (Brigevid 2018; Olsson 2007; see also Brigevid 2012 for Spanish regions). These findings stand in contrast with works on positions of substate nationalist parties. Although the family of substate nationalist parties has proven to be less Europhilic than



commonly assumed, the reviewed literature suggests a disparity between EU-attitudes of regional political élites and the regional public.

The literature on territorial restructuring in the EU encompasses one last strand which includes at least implicit connections to nationalist subunits. As the period between 2001 and 2005 marked the build-up and failure of adopting the European Constitution, scholars reflected territorial demands of subunits that were to be communicated to the intergovernmental body named The Convention on the Future of Europe and included in the draft Constitution. This issue is examined universally (Lynch 2004; Keating 2004) and region-specifically in the cases of Catalonia (Guibernau 2006; Roller 2004), Spanish regions (Bourne 2006), German Länder (Bauer 2006) and German Länder in comparison with Scotland (Jeffery 2004). Regions with an extensive degree of self-rule (the majority of which is constituted by nationalist subunits) displayed a high variation in territorial demands ranging from strict application of the subsidiarity principle and protection of minority languages to institutionalisation of the Committee of the Regions as a regional co-decision power. Amongst the most frequently discussed aspects were the choice of representation channels for conveying demands to the Convention, fears of an aggravating competence overlap due to further integration deepening as well as the subsequent disenchantment when the regions were denied direct participation and most of their demands remained unheard. Notwithstanding some negative perceptions on the part of regional élites as a consequence thereof, no repercussions on minority nationalism were detected.

The rejection of the European Constitution by some EU member states marks the definitive demise of 'Europe of the Regions'. The genesis, evolution and waning of this notion is reflected in an extraordinary wave of literature (Keating 2008; Hepburn 2008; Elias 2008b; see also Moore 2008). Scholars who had been contributing to the above debates throughout the years summarise, analyse, but also challenge the principal reasons that led to an increased scholarly interest in this issue. Although their works do not address minority nationalism expressly, and although a number of crucial studies appeared afterwards, this wave represents a symbolic culmination of the research into nationalist subunits and European integration.



4. Minority nationalism and European integration: additional insights

In parallel with debates on minority nationalist parties and structural impacts on the regional level, we can gain some insight from the voluminous literature on regional mobilisation in the EU. Earlier (Marks et al. 2002; Jeffery 2000; Hooghe and Marks 1996; Marks et al. 1996a; Hooghe 1995b) as well as later works (López and Tatham 2017; van Hecke et al. 2016; Tatham 2016; Keating and Wilson 2014; Högenauer 2014; Greenwood 2011) attempt to pin down the determinants accounting for regional action in the EU's multi-level governance structure. Even though these large-scale cross-country analyses do not place minority nationalism at the centre of their inquiry, they occasionally comprise among independent variables aspects commonly associated with minority nationalism such as regional language, regionalist or nationalist parties and self-perception as a minority nation.

In unison with earlier findings, later literature asserts that dispersion of authority upwards and downwards has engendered significant competence overlaps between the levels of governance (Jensen et al. 2014: 1248). An analysis of regional preferences shows that demands for control over future upward dispersion depend on the degree of self-government. Greater self-rule implies a greater potential loss of competences and thereby greater apprehensions of an increasing competence overlap. In contrast, regions with greater shared-rule rely on domestic co-decision and representation channels allowing them to influence and obstruct future disempowerment intentions (Tatham and Bauer 2014a: 1380). Since nationalist subunits enjoy a considerable degree of self-rule, but often fail to be represented as one single entity in the unitary system of the parent state, this is an ambiguous finding. Concerning the preferences of nationalist subunits for deeper integration, two contradicting trends can be observed. The presence of a regionalist party is strongly associated with deepening supranationalism (measured in terms of substate preferences for the empowerment of the European Commission). In contrast, self-perception as a minority nation is negatively associated with further supranationalism. Without attempting to ascertain causality, the authors interpret the latter by suggesting that minority nations may aspire for statehood hence preferring



intergovernmentalism to greater supranationalism once independent states (Tatham and Bauer 2014b: 258-9).^{IV}

As regards factors leading to conflicting paradiplomacy, the frequency of conflicts between substate and national authorities is neither significantly affected by party political incongruence nor the level of devolution. It is therefore surmised that mobilisation of regions governed by opposition, regionalist or nationalist parties does not undermine the position of states and central governments in the EU. This applies equally to devolved and nondevolved states (Tatham 2012: 76-77, 83). In other words, regional action in the EU has no significant disintegrative effect on member states whatsoever. When regions communicate their interests to European institutions, regional distinctiveness in terms of ethnicity is said to affect positively the use of intra-state representation channels. On the other hand, a region governed by a regionalist party, although not necessarily a nationalist one, fails to affect the use of representation channels in any significant way. The fact that ethnicity and regionalist (nationalist) party variables do not affect the use of representation channels in the same significant way is attributed to the ambivalent relationship of regionalist parties to European integration (Huwyler et al. 2017: 772).

Last but not least, we can gain some insight from the current literature strand exploring citizens' voting behaviour and popular support for the EU. Alongside the research on individual preferences at the national level (e.g. Dellmuth and Chalmers 2017; Chalmers and Dellmuth 2015), a number of studies also examine individual preferences at the regional level (Bauhr and Charron 2019; Nicoli 2018; Schraff 2017). Of particular note is the analysis of Dijkstra et al. (2019) mapping at the largest geographical scale the share of anti-EU and anti-system votes in the last national elections. One can draw from this study that individuals in nationalist subunits tend to vote more pro-European parties than the rest of the country. Contrary to findings on individual attachment and regional identity highlighting Eurosceptic attitudes, regions considered minority nations display the lowest percentage of votes cast for anti-EU parties. The highest pro-European vote share in member states accommodating minority nationalism can be found in Scotland, Catalonia^V, Corsica, South Tyrol, Flanders and, partially, Wales. The main drivers for higher anti-EU votes are associated with relative economic decline, lower levels of education and fewer employment opportunities, with lower population density serving as a



catalyst for voting behaviour (Ibid: 12). Since some of these characteristics fully apply to some of these nationalist subunits, the absence of a higher anti-EU vote share must be explained by other factors.

5. Minority nationalism in the EU: current debates beyond the relationship at question

Within the current literature on minority nationalism in EU member states having no reference to integration processes, three distinct strands can be discerned. Firstly, in the light of the recent secessionist aspirations in Scotland and Catalonia, scholars seek to theorise the scenario of an independent region-state (re-)joining the EU. A number of monographies and single case studies inquire into legal issues surrounding a region's withdrawal from an EU member state. In particular, the following aspects are addressed: continuity of EU membership, EU citizenship and common currency (Hipold 2018; Closa 2017; Petit 2017; Duerr 2015; Connolly 2013; Tierney 2013) and prevalence of European law over public international law during the secession process (Chamon and van der Loo 2014; Gounin 2013). Admitting that scholars build on existing knowledge and valid law, it is fair to say that the nature of their studies renders the conclusions rather speculative.

Secondly, distinctive secessionist, nationalist and autonomist movements in EU member states are compared and contrasted from various perspectives. The focus ranges from domestic political and institutional aspects concerning the accommodation of minority nationalism (Hipold 2016; Belser et al. 2015) to economic aspects represented by the centre-periphery cleavage (Dalle Mulle 2018). These comparative studies concentrate exclusively on inner-state tensions between the nationalist subunit and the central government, disregarding influences of the European dimension. If references to the EU and integration processes are made, they are sporadic, unsystematic and not driven by an intention to unravel the linkages between the two phenomena.

Thirdly and finally, a considerable amount of literature exists on the relationship between minority nationalism and immigration. In this debate scholars attempt to explore the effects that



immigration flows into the territory of nationalist subunits have on minority nationalist parties and their discourse. The principle puzzle addressed is as to whether immigration accelerates or hampers the region's independence project. The major aspects under study are as follows: frictions with the central government over immigration control and integration policies, trends in cultural and political identification of migrants (identification with the minority nation vs. with the majority nation) and migrants' voting behaviour once endowed with suffrage. These aspects are examined in multi-region comparative studies (Medda-Windischer and Popelier 2016; Barker 2015; Zuber 2019), two-case studies (Medda-Windischer and Carlà 2015; Carlà 2017; Hepburn and Barrero 2014) as well as in single case studies (Byrne 2020; Franco-Guillén 2015; Carlà and Medda-Windischer 2018). The most frequently studied cases comprise Catalonia, Scotland, South Tyrol and Flanders. Although multiple factors regarding the impact of immigration on minority nationalism are at play, the crucial one is deemed to be the very character of minority nationalism (ethnic vs. civil based).

6. Summary, avenues for further research and an analytical framework

How does European integration impact on minority nationalism? Is there evidence that processes of European integration exacerbate or moderate substate nationalist tendencies? Although there is a spectrum of related debates, it can be argued that we know relatively little about this relationship. The literature surveyed in the previous sections provides only limited evidence as to whether processes of European integration affect aspects of minority nationalism such as its intensity and character. Acknowledging that fragmentary conclusions can be drawn from past and recent works, the current state of knowledge is certainly far from being comprehensive. The main findings are summarised thematically in issue areas in the following table. To present approximate validity of the reached conclusions, each issue area contains a listing of subunits (substate nationalist parties) that were subject of research.^{VI} (For reasons of simplicity, some studies are pooled.)



Issue area	Case studies
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Substate nationalist parties and European integration

Three-stage evolution pattern: animosity – enthusiasm – disillusionment	Large-n <i>Scottish National Party, Plaid Cymru, The Basque Country; partially: Bayernpartei, Sardinia, Galicia, Brittany, Northern League; (deviant cases: Flanders, Catalonia)</i>
Parties differentiate between various aspects of European integration and formulate nuanced positions	<i>Scottish National Party, Bloque Nacionaliste Galego, Corsica</i>
Positions towards the EU are co-shaped by the context of domestic politics in the form of party competition at the substate/national level and by party's territorial and socio-economic goals	Large-n <i>Scotland, The Basque Country, Catalonia, Flanders</i>
Electoral opportunism and searching opposition to the central government's stance on Europe influence party positions on the EU	<i>Scotland, Wales, Northern Ireland, Northern League</i>
Party support for European integration is conditional on allocation of structural funds (outside the enthusiastic period of the 1990s)	Large-n
Multi-level governance structure led to a moderation of nationalist party positions and, at the same time, to more explicit positions on regional autonomy of state-wide parties at the substate level	<i>Scotland, Bavaria, Sardinia</i>
Substate nationalist parties did not become a full-fledged parliamentary group in the European Parliament due to their fragmentation and different ideological positioning; they display a low degree of Europeanisation and politicisation of European issues	Large-n
Substate nationalist party family is rather heterogeneous and on aggregate Europhile only slightly above the average value	Large-n

Structural impacts of European integration on nationalist subunits

The EU's multi-level structure impacts on social identity processes: European identity intensifies regional self-identification and contrasts the national identity by opposing the Eurosceptic stance of the central government	<i>Scotland, Wales, Northern Ireland</i>
Character of the regional identity matters: exclusive regional identity dampens one's support for the EU	Large-n
Individuals in distinctive regions and minority nations display the least pro-European attitudes	Large-n
Individuals in nationalist subunits vote the most pro-European (the least anti-EU) parties in national elections	Large-n
Rejection of the European Constitution caused no discernable repercussions on minority nationalism	<i>Spanish regions, Catalonia, Scotland, German Länder</i>



The EU has constraining effects on the decision-making process at the regional level: European integration entails an encroachment on the autonomous competences of the regions; no causal links to minority nationalism were explicitly studied

The Basque Country
Belgium
United Kingdom
German Länder

The literature review has revealed some interesting contradictions such as a discrepancy between EU-preferences of regional élites (although these are on aggregate lower than assumed) and the regional public. Similarly, there is a striking inconsistency between the unenthusiastic EU-attitudes of individuals in minority nations and their highly pro-European voting behaviour. Nevertheless, the key question of whether European integration exacerbates or moderates minority nationalism and the implications thereof for the post-2010 context remain insufficiently answered. In order to remedy this deficit, avenues for future research are suggested in this section. By connecting persistent research gaps with recent debates on minority nationalism, I delineate five areas of tension in the multi-level governance structure of the EU invoked by concomitant integration and disintegration processes which may have the potential to impact on minority nationalism. A framework is also briefly outlined by means of which the position of a nationalist subunit within these (dis)integration processes could be conceptualised.

Since the outbreak of the European debt crisis in 2010, the EU has found itself in a permanent crisis modus. Aggravated by the refugee crisis and its mismanagement from 2015 onwards and accompanied by failed attempts to reform the EU, the cumulation of crises has led to a decline in confidence in European institutions and the integration project as such. Furthermore, as the Brexit case illustrates, the EU has reached a point where the integration trajectory of a member state is, for the first time in history, ultimately regressive. For nationalist subunits, tensions produced by the interplay of current crises may pose some new dilemmas about the nationalist project. I detect these dilemmas in five major areas.

The first area is associated with the European Stability Mechanism (ESM) and financial transfers to the crisis-shaken countries of the euro zone. As asserted in the literature, economic inequality and the domestic centre-periphery cleavage are amongst the major factors spurring substate nationalist claims (Dalle Mule 2018). Since the European debt crisis, inner-state frictions over the administration of revenue have gained a European dimension: within the



institutionalised (supranationalised) ‘agency’ of the ESM those nationalist subunits generating revenue above the national average may see their sources vanish indirectly via the transfer channels. What is more, financial transfers of the ESM occur additionally to the already ‘unjust’ domestic redistribution.^{vii} Interestingly, though, several nationalist subunits are located in countries hit by the debt crisis and imposing austerity measures. These subunits could be well considered beneficiaries of the ESM. One can therefore expect the transfers of the ESM to play out differently in different contexts depending on the region’s relative financial position within the country as well as the country’s position within the EU. The ESM as a process of European integration and its potential to bring about anti-EU or pro-EU sentiments in nationalist subunits is certainly an issue future works should explore.

The second area pertains to the refugee crisis and the refugee redistribution mechanism. Drawing from the debate on the relationship between minority nationalism and immigration, migrants are said to identify rather with the larger society of the state than with the minority nation (e.g. Medda-Windischer and Popelier 2016). Following this logic, influxes of migrants threaten to dilute the cultural homogeneity of the nationalist subunit, ultimately reducing the (relative) share of nationalists. In decentralised countries, inner-state frictions over immigration emanate mainly from the domestic division of competences: policy areas such as integration and education are in general administered at the regional level, while granting asylum, citizenship and suffrage and the allocation of refugees on the state territory are deemed high politics and hence exclusive competencies of the central authorities. In the aftermath of the refugee crisis, EU member states sought to establish a permanent redistribution mechanism on the basis of binding quotas. All countries accommodating minority nationalism, with the exception of the United Kingdom, voted in favour of the mechanism. The research gap lies in examining the positions of nationalist subunits towards attempts to institutionalise a supranational refugee redistribution mechanism. The question future research should shed some light on is whether establishing yet another authority empowered to decide about the allocation of people on the subunit’s territory reinforces anti-EU sentiments or not. That the outcome may not be unambiguous is suggested by the fact that all nationalist subunits are located in the EU member states that were supposed, at least in theory, to be unburdened by the mechanism.



The third area is closely linked with the previous two and addresses the deepening of European integration in the broadest sense. Notwithstanding the current lack of popular support for further integration, some representatives of West European member states highlight the necessity of further supranationalisation in certain policy areas. As the literature review has shown, for many years in the past decades nationalist subunits perceived the deepening of European integration as an advantageous process weakening the state and leading to alternative forms of self-determination than statehood. It has been equally asserted that processes of European integration were accompanied by a real disempowerment of subunits with already existing self-rule. Bearing these two contradicting effects in mind, future research should explore present stances of nationalist subunits on central governments' and the EU's proposals for further integration. One cannot rule out that, in the light of the post-2010 context, nationalist subunits may incline to perceive any further integration as a threat that should be opposed.

The current crises in the EU primarily impact on member states. As a consequence, the rise of Euroscepticism and the electoral success of right-wing and anti-establishment parties have, in some of them, changed the political landscape beyond recognition. Many new political élites see a solution in less integration and call for a less centralised EU. A goal that can manifest itself, as the Brexit case illustrates, through a full withdrawal of a member state from the EU. Such a withdrawal can have significant repercussions on the substate level. Since nationalist subunits tend to vote more pro-European oriented parties than the rest of the country (Dijkstra et al. 2019), a discrepancy emerges between preferences for the EU expressed as an average value at the national level and preferences of minority nationalists at the substate level. For nationalist subunits, the parent state's withdrawal would mean the definitive loss of the benefits acquired through integration and an end to the emancipation process on the state. A gloomy scenario with the potential to spur secessionist tendencies. The case of Scotland demonstrates that not only did the Scots vote against leaving the EU but they also requested a second independence referendum in the aftermath of the positive Brexit vote (Cetrà and Liñeira 2018: 726). Even though no other member state has come close to an 'exit-referendum', this option is addressed rhetorically every now and then. Therefore, the fourth area pertains to positions of nationalist subunits on the scenario of their parent state leaving the EU. Drawing on the example of



Scotland, future research should examine whether the rise of majority nationalism at the national level demanding less EU integration or an outright withdrawal reinforces minority nationalism at the substate level, pushing the subunit to disintegrate with the parent state.

The fifth and final area addresses the question of continuity of EU membership after secession. This question per se is not raised by the post-2010 context. Although theoretically developed, it became practically relevant only with Scotland's independence referendum and Catalonia's failed proclamation of independence in 2014 and 2017 respectively. As reiterated in the literature, these two subunits rely either on the continuity of EU membership or on its restoration with minimal costs (e.g. De Waele 2017: 121). This view is contradicted by EU representatives, according to whom a newly independent subunit would be considered a third party obliged to undergo a standard accession procedure (Gayle 2017). This implies the possibility that the region's accession is blocked in the Council by the former parent state or any other member state trying to avoid a precedent case. Future research should examine whether the scenario of not being able to rejoin the EU after secession resonates within the nationalist subunits and whether it has a moderating effect on their secessionist aspirations. This area equally includes reflections of events surrounding the independence struggle in Scotland and Catalonia by other nationalist subunits. It could be assumed that the actual outcome in these two cases may well impact on the preferences of other nationalist subunits and influence their future strategies.

The cumulation of crises in the post-2010 period in the EU gave momentum to a specific strand of literature: theories of disintegration. In this remarkable debate, scholars attempt to conceptualise and explain current forces behind European disintegration. Mainly by reversing existing theories of European integration, but also by developing new approaches, they seek to theorise alternative configurations of the integrated European polity that could emerge out of the current crises (Vollaard 2018; Jones 2018; Eppler and Scheller 2013; Vollaard 2014; Webber 2013). So far, however, theories of disintegration have been applied solely to the supranational and national level, leaving out the substate dimension completely.^{VIII}

In order to conceptualise the position of a nationalist subunit caught between integration and disintegration processes occurring at different levels within the EU's multi-level governance



structure, an original framework would be needed. Current literature offers some useful frameworks that could be, when aptly combined, used as a suitable instrument to this end. Drawing upon the universal theory of exit, voice and loyalty (Hirschman 1970, 1974), Jachtenfuchs and Kasak (2017) suggest that the structural dilemma of subunits in federal states between maximising autonomous policy-making (exit) and collective problem-solving (voice) on a cost-benefit basis is equally applicable to the position of member states in the EU. Hence, they propose an overreaching framework which conceptualises inner-polity tensions. As both nationalist subunits and member states can claim ‘exit’ from a higher unit, this universal but one-level framework needs to be joined by a multi-level framework linking the analysed polity with other levels of governance. Such a framework is suggested by Bauböck (2019). He devises a level-differentiated framework for a normative secession theory encompassing municipalities, substate units, independent states and supranational unions. The aim of Bauböck’s work is to conceptualise a polity’s secession as a vertical change of status that must be understood within a broader constellation of polities. When a polity strives for secession, both horizontal relations (with polities having equal legal status) and vertical relations (with upper polities deciding about the seceding polity’s success) must be considered.

Preferences of nationalist subunits are not invariant, but depend on a number of factors. Drawing also on Hirschman’s theory of exit, voice and loyalty, Vollaard (2018: 212) identifies the following variables:

‘The mechanism of exit, voice, and loyalty offers an explanation as to why this is so. The decision to make use of full or partial exit from member states depends on a number of considerations related to the degree of dissatisfaction, the degree of loyalty, the availability and costs of all exit options, and the voice options available to effectively address dissatisfaction.’

Combining the works by Bauböck and by Jachtenfuchs and Kasak against the background of Hirschman’s theory could serve as a starting point for developing a framework what would be apt for conceptualising and analysing the position of a nationalist subunit within integration and disintegration processes in the EU’s multi-level governance structure.

Future investigation should undertake in-depth comparative research of the most distinctive nationalist subunits and search for similarities and common patterns in the areas of tension delineated above. Having said this, it could be assumed that an analysis of qualitative data such



as parliamentary debates, election manifestos, interviews, etc. may uncover further potential areas that are still unknown. In the case of common patterns, future research should attempt to formulate a theory of substate disintegration in the EU which would join the family of disintegration theories.

7. Conclusion

The purpose of this review article was to survey and structure past and present literature strands concerning the relationship between European integration and minority nationalism and to summarise key findings on this issue. I find that the current state of knowledge remains considerably limited. In spite of some fragmentary insights, we know surprisingly little about the scope, causality and general underlying mechanisms between the two phenomena. To fill the research gaps, this paper aimed to delineate five possible areas of tension with the potential to affect minority nationalism. This article also attempted to outline a framework allowing for a conceptualisation and analysis of the nationalist subunit's position within the EU's multi-level governance structure. Regarding the developments in the EU in the post-2010 period, this paper posits that concomitant integration and disintegration processes and their impact on nationalist subunits represent a promising research avenue worth undertaking. Future research should enhance our understanding of whether, how, in which direction and under what conditions current (dis)integration processes occurring at different levels within the EU's multi-level governance structure impact on minority nationalism in EU member states.

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¹ Scholars refer to minority nationalism, substate nationalist parties and movements they represent differently in the literature (see Dandoy 2010 for an overview). Distinct groups inhabiting a nationalist subunit and claiming autonomy or independence are termed 'minority nations', 'national minorities' or 'ethnolinguistic groups'. As for the nationalist parties at the substate level, the following terms can be found: 'minority nationalist parties', 'substate (or sub-state) nationalist parties', 'regionalist parties', 'ethnic parties' or 'ethnoregionalist parties'. Acknowledging that terminological nuances matter, this paper uses the overarching terms *minority nationalism* and *substate nationalist parties*, unless referring to a surveyed work which explicitly uses a different term.

¹¹ Other terms referring to regions' visions of a growing influence in the 1990s and the early 2000s can be found in the literature. Regions wanted to obtain 'international actorness (personality)' and 'international recognition'.



Regarding European integration, they strived for a 'voice in Europe', 'self-determination in Europe', 'independence within Europe' or 'equal representation in the EU'. Last but not least, regions wanted to 'have a say in Europe'.

^{III} An isolated quantitative analysis examining the impact of economic integration on the votes for separatist parties, although cast at the national level, finds only a weakly significant effect (Brancati 2014). This work can be joined by Jolly (2015) showing that supranational integration combined with subnational fragmentation increases the economic viability of substate units. The potential of economic viability is used as the main argument by European minority nationalists challenging the nation state.

^{IV} The authors acknowledge that, while their sample does not include the most distinctive cases of stateless nations in the EU, such as Scotland, Wales, Flanders or Corsica, generalisability of this finding is limited (Tatham and Bauer 2014b: 259).

^V I consider Catalonia a special case. Although nation-wide parties in Spain adopt pronounced anti-establishment attitudes, they remain surprisingly in favour of the EU. Thus, the vote share for pro-EU parties is equivalent in Catalonia and in the rest of Spain (Dijkstra et al. 2019: 2, 4-6).

^{VI} The surveyed literature repeatedly points to the fact that undertaking genuine comparative research is constrained due to the unique institutional (constitutional) settings of the regions. Even though every reviewed work builds on some previous research for the purpose of a theoretical background, scholars do not cease to emphasise the context-specificity of nationalist subunits and the embedding states. Therefore, they eschew any generalisable conclusions beyond the case studies.

^{VII} All regions classified as net contributors within a country may perceive the transfers of the ESM negatively. However, the difference lies in the level of reference when addressing dissatisfaction. While individuals in regions not considered minority nations may express their dissatisfaction by casting anti-EU votes during national-level elections, minority nations may do so at the substate level, voting both against the EU and the central government.

^{VIII} Paradoxically, some theories of European disintegration are derived from theories of federalism, decision-making and secession in federal states and applied to the EU-member state relationship (see e.g. Vollaard 2018: 61-84).

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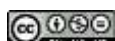
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**Regional responses to COVID-19:
A comparative analysis of EU and ASEAN policies
to counter the pandemic**

by

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Abstract

COVID-19 has posed several challenges at the national level with governments adopting various policies to counter its spread. Nonetheless, the transnational nature of pandemics requires a coordinated regional response and cross-border cooperation. This article aims to examine the initial responses and the development of regional policies of the two most successful examples of regional organisations; EU and ASEAN. This comparative analysis accounts for the different forms of integration and the varying COVID-19 spread levels between them. The documentation of the respective policies highlights the different approaches and mechanisms employed. The study also showcases the divergence in perceptions and acts of solidarity while dealing with COVID-19 as a communicable disease. The findings further indicate that both organisations need to acquire a more proactive role in health and crisis management.

Key-words

COVID-19; EU; ASEAN; Policies; Regional Organizations



1. Introduction

In 2020 humanity faced one of the most infectious diseases originating from the coronavirus group lineage, known as COVID-19ⁱ. On March 11, the World Health Organization (WHO) declared it a pandemic leading states, international organizations, private actors and NGOs to focus their attention on countering the virus.

Besides public health consequences, COVID-19 also affected the economy, education, politics and security sectors leading governments to adopt nationalist and inward-looking policies. However, the threat faced is transnational, which raises the importance of cooperation in global governance.

The pandemic has tested the multilateral institutions' ability to manage crises and respond in a coordinated manner. Various criticisms on the lack of cohesion and policies enforcement have been expressed on how international organisations formulated their responses.

Therefore, this article intends to document and compare two regional organizations' initiatives on various fronts. The selection of the European Union (EU) and Association of Southeast Asian Nations (ASEAN) corresponds to their different levels of integration (Furtak, 2015) and the varying spread levels of COVID-19 between them.

This study analyses the official documents, announcements and press releases published in the official webpages of the two organizations from early January to late May 2020. Respectively we followed the updates provided in their particular designated sites on fighting COVID-19.

The paper is organized as follows. The first section examines the EU and ASEAN health policy before the outbreak, followed by the second and third section, which encompass the efforts and policies adopted amid the COVID-19 crisis. The fourth section focuses on the comparative analysis in terms of planning, timely response and expressions of solidarity. Lastly, the conclusion highlights their different approaches and offers recommendations on how to strengthen regional coordination to prevent future pandemics.



2. Regional Health Policies of the EU and ASEAN

Both the EU and ASEAN have established regional health governance frameworks over the years, promoting initiatives that enhance integration, harmonization and coherence of regional health policies.

The EU is an international organization known for its hybrid governance model. In certain areas, decision-making power is centralized at the community level (e.g. trade, monetary and economic policies) and in others, they are treated at the intergovernmental level (e.g. defence and security) (Hix & Holand, 2011).

The field of public health in the EU was covered by the Maastricht Treaty and later by the Amsterdam Treaty. However, “health is not considered an important factor when discussing alternative policy choices, and neither does it seem to be an important objective” (Ståhl, 2010, p.176). Within its scope of the legislation, the EU has a limited role in public health which lies within the responsibility of national governments.

Nevertheless, the EU encourages improvements in health systems, such as the European Commission's Directorate for Health and Food Safety (DG SANTE) that coordinates the accessibility and effectiveness of the European health systems. The European Center for Disease Prevention and Control (ECDC) also monitors threats from emerging diseases and contributes to the preparedness in crisis response. Besides, the EU finances health projects such as the Health Program 2014-2020 (European Commission, 2020e).

Regarding the control of communicable diseases, the EU has focused on surveillance, rapid detection and response through the Rapid Alert and Response System (EWRS) established to favour permanent communication between the member states and the Commission. An informal advisory group of health ministers, the Health Security Committee (HSC), also coordinates cross-border health by supporting the exchange of information (European Commission, 2020a).

Likewise, ASEAN is an intergovernmental organization with its main focus being regional security and peace. Based on these principles it has developed a unique diplomatic engagement known as the “ASEAN Way” (Tekunan, 2015). Despite being perceived as “the most successful model of inter-state cooperation and conflict management next to the European Union” (Singh, 2008, p.142) it, however, lacks the relevant power to transpose the



organization's directives into national legislation. Additionally, it has been characterised by low institutionalization (Kliem, 2018) and slow economic integration (Kim, 2011).

The regional bloc has been affected by disease outbreaks and epidemics including SARS, H1N1 and MERS-CoV that in their occurrence, impacted member states severely in societal and economic terms. These previous experiences have allowed the organization to establish a number of initiatives and regional frameworks. Nevertheless, the differences in the political systems, economic capabilities and health infrastructure between its members pose challenges to collective approaches, particularly in crisis management.

Among the first initiatives of ASEAN progressive involvement in regional cooperation in health has been the establishment of the ASEAN Plus Three in 1997, bringing together its member states with China, Japan, and South Korea, to address the health and well-being of the region particularly in areas such as communicable and emerging infectious diseases (Kumaresan & Huikur, 2015). A few years later, ASEAN presented its "Healthy ASEAN 2020" vision proclaiming that "health shall be at the centre of development and ASEAN cooperation" (ASEAN, 2002).

However, it was the outbreak of SARS in 2003, and its impact in ASEAN countries that made evident the need to strengthen regional health collaboration in cross-border surveillance and screening procedures (Lamy & Phua, 2012).

Since then, the organization promoted new infrastructures and the development of an information-sharing network to be used in other instances of regional public health emergencies while specific tasks were allocated to individual countries (Curley & Thomas, 2004).

The adoption of the ASEAN Charter in 2007 established the ASEAN Socio-Cultural Community (ASCC) Pillar and blueprint creating a more integrative health governance framework to promote equity in health care access across the region (Lamy & Phua, 2012).

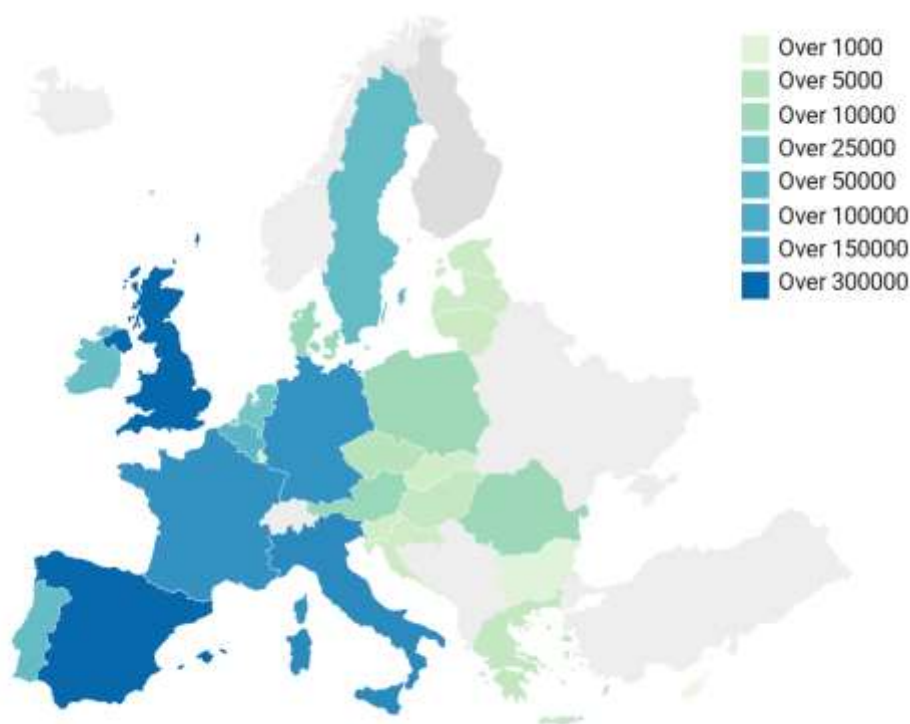
From the latest initiatives, the ASEAN Post-2015 Health Development Agenda urged for the strengthening of regional capacity and collaboration in fighting emerging threats, promoting resilient health systems in response to communicable diseases and ensuring effective health management (ASEAN, 2018).



3. EU responses

After the epicentre in China, the COVID-19 outbreak reached alarming proportions in Europe. Italy was among the first countries to suffer a high number of cases causing destabilization in its healthcare system. Under these unprecedented circumstances, Italy turned to the European Commission's Emergency Response Coordination Centre (ERCC)ⁱⁱ, requesting medical supplies (Braw, 2020) but no EU member state pledged to provide support. This lack of collective engagement reveals that states initially saw the outbreak as an Italian rather than a European problem. Later, the outbreak hit Spain, France and the United Kingdom to a large extent (Figure 1).

Figure 1 - EU COVID-19 spread levels by the end of May 2020



Source: Elaborated by the authors from Worldometer (2020)

In the face of this alarming situation in Europe, some member states have favoured the implementation of unilateral policies that undermined important economic and social EU pillars. Germany and France's decision to restrict exports of crucial products (protective



equipment and medical supplies) for preventing and countering the disease violated the principle of the free flow of goods (Gostyńska-Jakubowska & Scazzieri, 2020). At the end of March, the European Commission agreed that essential medicines and food could not be restricted across borders allowing the continuous flow of goods circulated via “green lanes”ⁱⁱⁱ(European Commission, 2020g).

The virus also posed challenges to the member states’ commitment to the Schengen Convention. Countries like Austria, Slovenia and Poland decided to tightly control their borders, preventing citizens other than their own from entering, thus disregarding the norms of free movement of people (Gostyńska-Jakubowska & Scazzieri, 2020). However, due to the later severity of the virus spread the Commission decided to temporarily restrict non-essential travel from third countries to the EU+ area^{iv} (European Commission, 2020g).

As part of mobility assistance, the European Commission has taken on an active role in supporting the consular repatriation of European citizens, financing about 75% of transport costs as a coordinated work between the ERCC, European External Action Service (EEAS)^v and the member states (European Commission, 2020c).

As a complement to the EU measures to contain COVID-19, European leaders agreed on five main lines of action: limiting the spread of the virus, the provision of medical equipment, promoting research, socio-economic tackling consequences, helping citizens stranded in third countries (European Council, 2020b).

Regarding economic measures, European finance ministers did not reach an initial consensus on appropriate policies to mitigate the crisis, nor on how to use the eurozone's bailout fund. That has generated strong criticisms for the lack of internal cohesion and slowness in responses. Nonetheless, the EU established the Coronavirus Response Investment Initiative (CRII), which provides a €37 billion package on strengthening healthcare systems, short-term employment schemes, and community-based services (European Commission, 2020b).

Another proposed initiative, the Coronabonds, has been a divisive idea among EU members (The New York Times, 2020). While Italy, France, Greece, Portugal, Spain were in favour of this “communitarization” of debt, Germany, Austria, Finland and the Netherlands opposed since it could result in a political issue with their taxpayers (Borelli & Karnitschnig, 2020). In addition, the request for contributions to the Emergency Support Instruments has led to the UK’s opposition, arguing that it does not confine with its 2019 Withdrawal



Agreement, thus adding a new layer of friction between EU and UK relations (Politico, 2020).

On April 23, the Eurogroup agreed on a package worth €540 billion. This agreement consists of three safety nets aimed to help workers, companies and EU members. The first net is set to provide up to €100 billion in the form of loans to assist workers in keeping their jobs. It will be guided by the temporary instrument, the Support to Mitigate Unemployment Risks in an Emergency (SURE). From the same package, the European Investment Bank offers up to €200 billion for the liquidity needs of small and medium-sized companies.

Finally, the European Stability Mechanism (ESM)^{vi} will mobilize up to €240 billion to support the healthcare systems of member states (Sandford, 2020). The ESM was established in 2012 to ensure stability in eurozone countries that experience financial problems (ESM, 2020).

One of the most anticipated proposals has been the European Commission new recovery tool, called Next Generation EU that is worth €750 billion is intended as an investment plan in the form of loans and grants^{vii} to assist in the long-term and sustainable recovery. Nonetheless, it has generated controversy once again among member states (European Commission, 2020f)

In terms of public health initiatives, the EU's role is complementary to national policies as per Article 168^{viii} of the Treaty on the Functioning of the European Union (TFEU). To deal with the COVID-19 consequences, the EU has used mechanisms already in place and created new ones. The ECDC has served as a facilitator to assess COVID-19 risks and guide the responses of states and the European Commission (European Commission, 2020h).

To complement the resources in the current public health crisis, the Commission has mobilized €3 billion of the EU budget mainly made available by two instruments. Firstly, the Emergency Support Instrument (ESI)^{ix}, to support the needs related to the distribution of protective equipment, the swift development of medication and the transportation of patients to cross-border hospitals. And secondly, the common European reserve of resources (rescEU)^x to allow the swift distribution of supplies (European Commission, 2020c).

As a way to share experiences in the treatment of COVID-19, the Commission launched the Clinical Management Support System on March 24. This initiative promotes a



communication network across Europe through web conferences among health professionals (European Commission, 2020d).

As a part of the health information exchange plan, the Commission established the COVID-19 advisory panel which brings together epidemiologists and virologists to formulate guidelines on appropriate crisis management. It has also encouraged research for treatments and vaccines such as the Horizon 2020^{xi} program and the CureVac vaccine developer^{xii} (European Union, 2020).

Another front of the EU's concern has been the intentional misinformation campaigns and the foreign manipulation on COVID-19. This disinformation is perceived as a threat to its security and to the international community highlighting that undermines the credibility of Western democratic institutions on their ability to deal with the pandemic (EEAS, 2020b).

Consequently, the EEAS has implemented an Action Plan against Disinformation with regular assessments and even set up a EUvsDisinfo website to inform the public on its policies (EEAS, 2020a).

4. ASEAN responses

The latest crisis of COVID-19 reached South East Asia in mid-January. Despite the region's close proximity to China, the number of cases and deaths were significantly smaller than in other regions. This can also be attributed to the fact that some countries such as Thailand, Malaysia and Singapore have a high score in health security and capabilities (GHS Index, 2020). Nonetheless, Singapore faces the highest number of cases, followed by Indonesia and the Philippines (Figure 2).



Figure 2. ASEAN COVID-19 spread levels by the end of May 2020



Source: Elaborated by the authors with data from Worldometer (2020)

The multifaceted challenges posed by COVID-19 were treated mostly unilaterally by each member state. Relief packages provided independently at a national level without much coordination (Kimura et al., 2020). This unilateral approach substantiated considerations that ASEAN is a largely ineffectual regional organization that cannot oversee a collective response to crises (Beeson, 2019).

Cooperation under the auspices of ASEAN is based on “informal consensus-building and mutual consultation within a non-confrontational, “face-saving” bargaining environment at a level of mutual comfort” (Kliem, 2018, p.25). This way, amidst the coronavirus crisis, several meetings and consultations were initiated on how to counter the pandemic. The meetings were mostly informational and aiming at reassuring the solidarity among member states. In regards to an important aspect arising during the pandemic, misinformation and fake news, ASEAN encouraged cooperation in developing a set of guidelines and a possible common platform to facilitate timely sharing of information (ASEAN, 2020d).



ASEAN from the very early manifestations of the disease had frequent consultations with China for sharing medical and health information. On the communiqué issued after the foreign ministers meeting in Laos (ASEAN, 2020g), ASEAN praised China's response to the pandemic, and China returned the favour by donating medical equipment to ASEAN Secretariat (ASEAN, 2020c).

The main responses of ASEAN were guided by the ASEAN Post-2015 Health Development Agenda (APHDA)^{xiii} and rest on the deployment of existing health mechanisms such as the frequent meetings of the Health Ministers, the ASEAN Emergency Operations Centre Network, ASEAN Senior Officials for Health Development (SOMHD) and ASEAN BioDiaspora Virtual Centre for big data analytics and visualization (ASEAN, 2020a).

ASEAN, except for the frequent meetings of its Health Ministers, has also initiated video conferences with other health officials from China, ASEAN Plus Three, USA, and Italy (ASEAN, 2020f). In regards to research, initiatives such as sharing of experience and best practices in clinical treatment, and development of vaccines were promoted not as an institutionalised regional form but as coordination between the member states and partner countries.

The Special ASEAN Plus Three Summit on Coronavirus Disease 2019 (COVID-19) which took place via video conference on 14 April 2020 (ASEAN, 2020d) put forward a number of responses such as the transparent exchange of real-time information on measures taken by each country to combat the disease, the establishment of an APT^{xiv} reserve fund safeguarding essential medical supplies. The members reaffirmed their commitments to restore business and social activities by preventing abrupt potential economic downturns. They also agreed in enhancing scientific cooperation in epidemiological research, through the APT Field Epidemiology Training Network (FETN). Among the most important decisions of the Summit was the establishment of the COVID-19 ASEAN Response Fund to reallocate existing available funds and encourage technical and financial support. Moreover, the utilization of the ASEAN Plus Three Emergency Rice Reserve (APTERR) ensures food security and the sustainability of regional supply chains.

The economic sector is one of the most affected in the region. Constraints in the mobility of the labour workforce and disruptions in the flow of goods and services have affected the region's global value chains (ERIA, 2020). Due to these implications, the ASEAN Ministers



on Agriculture and Forestry (AMAF) issued a statement reassuring the food security, food safety and nutrition in the region amidst the crisis (ASEAN, 2020b).

Another sector heavily impacted by border closures, and travel ban is the tourism industry. Tourism contributed US\$380 billion (12.1%) of ASEAN overall GDP in 2019 (WTTC, 2019). Cambodia, Thailand and the Philippines will be most impacted in this area since tourism accounts for 32.8%, 21.6% and 24.7% of their GDP, respectively (ASEAN policy brief, 2020). After the first imposed lockdowns and travel restrictions ASEAN Tourism Crisis Communications Team (ATCCT) issued a joint media statement with travel instructions on each country and the hotline numbers (ASEAN, 2020h). Moreover, on April 29, the Tourism Ministers joined a special meeting to revitalize the tourism industry by adopting a collective course in protecting both workers and visitors (ASEAN, 2020e).

ASEAN's initiatives to counter COVID-19 were based on a multilateral approach engaging with other stakeholders in South East Asia but also revealed the bloc's economic interdependence to China as its largest trading partner for the first quarter of 2020 (ASEAN Briefing, 2020). In addition, it indicated that ASEAN in the COVID-19 crisis has managed to successfully securitise the pandemic (Kamradt & McInness, 2012) adopting a more human security approach that was underdeveloped in previous instances of pandemics (Caballero, 2008).

5. Analysis

EU and ASEAN represent different models of integration and health governance; therefore, some differences are expected in the way they responded to the crisis. The principle of solidarity is a point to be highlighted in this comparative analysis. As mentioned, European member states initially did little to help Italians with medical supplies. Besides the severe restrictions on exports of crucial products by some European countries has caused controversy in regards to the EU's principles of cooperation, unity and solidarity and was perceived negatively by European citizens. According to an opinion poll, the majority of respondents consider that the EU has not helped during the crisis accounting for 61% in Italy, 34% in Spain and 46% in France (DG COMM, 2020). However, mechanisms supported later by the EU such as ESI, resCEU, SURE have shown a renewed level of solidarity.



ASEAN first responses lacked coordination and perceived as mostly superficial (Cameron, 2020). However, since March and April 2020 it has achieved an increased policy convergence and a more united regional response, with the use of the organization's existing health mechanisms (Djalantei et al., 2020). Given its intergovernmental nature and limited capacity, ASEAN managed to showcase a high level of solidarity between its members with frequent ministers' meetings to exchange information and consultation.

Public health is another important area to compare. ASEAN has perceived infectious diseases under a security frame; however, after the Post-2015 Health Development Agenda has adopted a broader approach to its regional health governance, incorporating elements of the Sustainable Development Goals. Similarly, the EU adopted a multifaceted health approach accounting for the security, economic and development implications.

Economic policies, however, differ due to the size of the EU that employs 200-times more staff than ASEAN and has a 430-times larger administration budget (Chong & Kliem, 2020). Therefore, the EU has sought to increase the organization's own financial resources by adopting packages and mechanisms to avert a severe economic downturn. On the other hand, ASEAN lacks the economic resources to initiate this sort of initiatives and appears more dependent on its members' stimulus packages, the Plus three members and other organizations contributions. In particular, countering communicable diseases receives the largest amount of financial support from external partners (Amaya et al., 2015). For instance, the EU mobilized €350 million to assist ASEAN in its fight against COVID-19 (EEAS, 2020c).

In terms of scientific research, it is observed that the EU invested in research programs while ASEAN focused more on sharing information and medical breakthroughs between its members and partners.

Finally, the EU and ASEAN approaches differ in how to deal with disinformation. The EU's approach has been rather assertive, openly accusing China and Russia of disinformation campaigns, whereas ASEAN refrained from such practices. Also, the EU set up a webpage and campaign to inform the public while ASEAN focused on its members' goodwill on cooperation in countering misinformation and fake news.

Among the key challenges that ASEAN faced amidst the pandemic its highly politicised decision-making processes (Fidler, 2013), the lack of a stable institutional profile in health governance (Waldman, 2007), norm divergences between its member states (Baker et al.,



2015), financial and supply-side constraints (Minh et al., 2014) and its dependence from external donors China primarily (Dalpino, 2020).

Although the EU's degree of institutionalization favours more decisive responses, the organization showed unpreparedness to contain the spread of the disease. The limitations of the EU's competences in the field of public health are characterized by fragmented and insufficient governance resulting in non-binding recommendations, a lack of resources and negligence in data sharing (Renda & Castro, 2020). Furthermore, Brexit constitutes a threat to the control of infectious diseases with the exclusion of the UK from future EU structures (Flear et al. 2020).

Overall, the policies analysed showcased the EU's more proactive role in decision making compared to ASEAN, that however achieved a higher level of solidarity among its members.

6. Conclusion

COVID-19 will leave its mark in the 21st century for its global, humanitarian, economic, political, social and health implications. It also revealed that regional organizations still lack the mechanisms to address the effects of communicable diseases. The lessons of this pandemic for the regional institutions rest on them assuming a greater health role (Forman et al., 2020) and keep investing in initiatives to deal and avert future pandemics.

The comparison in this paper attempted to highlight how ASEAN and EU reacted and what mechanisms employed in countering the pandemic. The findings were indicative of a slow, uncoordinated response from both organisations that later followed different directions. ASEAN focused on its already established mechanisms for exchanging information while reassuring the solidarity between its members. The EU, despite the mishandlings and lack of solidarity expressed in its first responses, eventually adopted a multifaceted approach that nevertheless focused mainly on the economic recovery of the bloc.

The study concludes that regional organizations still need to develop pre- and post-pandemic policies and gain a more proactive role in health and crisis management.

While cross-regional level exchanges can provide lessons from the successes and failures of one another, it is evident that there is no unified perspective on regional health governance. More steps in this direction should be adopted, including the establishment of



interregional committees to devise action plans for crises and disease outbreaks and the transparent sharing of scientific information.

Certainly, there is a non-exhaustive list of initiatives that could contribute to regional health governance and crisis management that require not only the consensus of member states but a firm commitment to invest in health policies and promote a multilateral approach.

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ⁱ Officially designated as SARS-CoV2.

ⁱⁱ ERCC was established in 2001 and has coordinated the provision of assistance to countries affected by disasters such as civil protection teams, relief items and equipment.

ⁱⁱⁱ Internal border-crossing points on the trans-European transport network.

^{iv} All Schengen Member States (including Bulgaria, Croatia, Cyprus, and Romania) and the 4 Schengen Associated States (Iceland, Liechtenstein, Norway, and Switzerland)

^v European Union's diplomatic service that entered into force in late 2009

^{vi} The ESM is an official financial institution created as a successor to the European Financial Stability Facility

^{vii} To be paid back between 2028 and 2058. <https://www.bbc.com/news/world-europe-52819126>

^{viii} Read more <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E168>

^{ix} Created in 2016 to deal with the massive influx of refugees in Greece

^x Established in 19 March 2020

^{xi} It is the largest EU program in Research and Innovation.

<https://ec.europa.eu/programmes/horizon2020/en/what-horizon-2020>

^{xii} A biopharmaceutical company based in Germany that develops vaccines for infectious diseases.

^{xiii} ASEAN Post-2015 health development agenda (2016-2020) outlines the organization's goals in health “To promote a healthy and caring ASEAN Community, where the people achieves maximal health potential through healthy lifestyle, have universal access to quality health care and financial risk protection; have safe food and healthy diet, live in a healthy environment with sustainable inclusive development where health is incorporated in all policies” on <https://www.aidsdatahub.org/sites/default/files/publication/ASEAN-Post-2015-Health-Development-Agenda-2018.pdf>

^{xiv} ASEAN Plus Three (China, Japan, South Korea)

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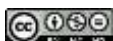
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Sustainable Agri-Food Systems, Climate Change and CAP Strategic Plans in the ambitious pathways of the EU after the Green Deal

by

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Abstract

In December 2019 the EU Commission presented the European Green Deal as directly connected with the Commission's strategy to implement the United Nation's 2030 Agenda. More recently, the Communication from the Commission of 20 May 2020 on the Farm to Fork Strategy strengthened further the efforts for building a fair, healthy and environmentally-friendly food system. The EU Common Agricultural Policy (CAP) 2021-2027 is intended to play a key supporting role for climate change mitigation and adaptation of agriculture as well as environmental protection. The paper considers how the recent communications of the EU Commission address the issue of sustainable farming and food system against climate vulnerability while ensuring food security. It evaluates the relationships among the EU sustainable development strategy, the revised CAP and the EU transition pathways to climate resilience.

Keywords

sustainable development; climate policy; common agricultural policy (CAP); Green Deal; National Strategic Plans



1. Introduction

Sustainable development is enshrined in the European Union treaties, being at the heart of the European policy for a long time (McMahon 2015). However, many critics have been raised regarding the lack of a coherent and comprehensive strategy in implementing Sustainable Development Goals (SDGs) at the EU level, in the more than five years that have passed since the adoption of the SDGs.^I Even if limited, the intervention of the EU has been shaped by the common efforts of reaching the ambitious goals set by the 2030 Agenda for Sustainable Development, adopted by the UN General Assembly on 25 September 2015.^{II} By 2030, the European Union shall, *inter alia*, implement resilient agricultural practices that increase productivity and production - under Goal 2; integrate climate change measures into national policies, strategies and planning, strengthen institutional capacity on climate change mitigation, adaptation, impact reduction and early warning – under Goal 13; protect, restore and promote sustainable use of terrestrial ecosystems – under Goal 15.^{III} Within these goals, the UN Environment Assembly of the United Nations Environment Programme encourages to pursue synergies and co-benefits among different policy areas (e.g. climate change, agriculture, food, water, energy access) and to take advantage of the resulting synergistic effects.^{IV}

While sustainable development involves multifaceted perspectives, climate change has been identified as one of the new threats for the achievement of SDGs according to the 2019 High-level Political Forum (HLPF) that concluded in July last year.^V Climate change, agriculture and food are interrelated in many ways on multiple scales: agriculture both contributes to and is affected by climate change (Angelo et al. 2017; Adler 2013). Once the novelist Wendell Berry said that ‘eating is an agricultural act’ in describing the importance of understanding the connection between eating and the land (Berry 1990). Food security and safety are particularly affected by climate change. As recent studies suggest, climate change would influence both the nutrient intakes of food, due to a ‘great nutrient collapse’ caused by increasing carbon dioxide in the atmosphere, and its safety (Alabrese 2019a; Fanzo et al. 2018). Furthermore, the loss of crop varieties due to the adverse effects of climate change could affect the cultural dimension of food security (Mbow et al. 2019). On the other hand, agriculture is an important contributor to climate change. As farming activities directly depend on climatic conditions, changing in the rainfall and temperature



patterns, and extreme events such as droughts and heatwaves drive farmers to increase their use of pesticides and fertilizers, thus increasing the potential for pollution and adverse impact on human health. The EU policy framework recognises a set of measures to mitigate its impact, i.e. agronomic measures (aiming at reducing the need for nitrogen fertilisers), livestock measures (closed storage of manure, improved application of manure and urea fertiliser, improved livestock feeding strategies so that animals produce less ammonia-rich manure, as well as anaerobic digestion for large farms), or energy measures (such as developing photovoltaic installations or reducing fuel consumption).^{VI}

Within this context, the EU Common Agricultural Policy (CAP) instruments will play a key supporting role for climate change mitigation and adaptation as well as environmental protection (Vanham 2020) – with an expected 40% of the CAP overall budget for 2021 to 2027 that will contribute to climate action. In December 2019, the EU Commission presented the European Green Deal as directly connected with the Commission’s strategy to implement the United Nation’s 2030 Agenda.^{VII} More recently, the Communication from the Commission of 20 May 2020 on the Farm to Fork Strategy is aimed at strengthening further the efforts for building a fair, healthy and environmentally-friendly food system.^{VIII}

The paper will investigate how the recent communications of the European Commission address the issue of the sustainability of the farming and food system against climate vulnerability while ensuring food security. First the article provides an analysis of the strategic agenda for the farming and food system as set out in the European Green Deal. It then explores the main connections between the efforts to tackle climate change, protect the environment and preserve biodiversity, recognised in the Farm to Fork Strategy. Lastly, it reflects on the proposal of the European Parliament and the Council for a new regulation on support for strategic plans under the Common agricultural policy and financed by the European Agricultural Guarantee Fund and by the European Agricultural Fund for Rural Development. In conclusion, the article will evaluate the relationships among the EU sustainable development strategy, the current and future Common Agricultural Policy and the EU transition pathways to climate resilience, thus distilling what can be learned on the state of policy coherence.



2. The European Green Deal: climate change is *this generation's defining task*

In December 2019, the EU Commission presented the European Green Deal as ‘a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive’. The issue is directly connected with the Commission’s strategy to implement the United Nation’s 2030 Agenda and the priorities announced in President von der Leyen’s political guidelines.^{IX} In the Commission’s view, the European Green Deal is aimed at providing a roadmap for making the EU's economy more sustainable, where there are no net emissions of greenhouse gases by 2050 and economic growth is decoupled from resource use. The roadmap is understood as a *living* document that will be updating as needs are progressively defined and context evolves within a feedback and feedforward loop. This designs the course of action to strengthening the efficient use of resources by transitioning to a clean and circular economy as well as cutting pollution. The Green Deal thus outlines investments needed and financing tools available to turn climate and environmental challenges into opportunities, reaffirming the collective responsibility of the European Union to sustainable development while ensuring a just and inclusive transition. An increasing number of scholars are discussing the economic impact of the Green Deal in different sectors, considering *inter alia* the issue through a cost opportunity perspective and how to design economic incentives to support the implementation of the Green Deal (Camilleri 2020; Streimikis et al. 2020; Pellegrini- Masini et al. 2020).

According to the Commission’s view, there is a need to rethink policies to deliver the Green Deal and establish intense coordination to unlock synergies across policy areas. The agricultural and food sector is considered crucial to manage the transition. In this framework, the Common Agricultural Policy (CAP) will remain a key supporting tool, according to the Commission. To achieve these goals, the EU needs to ‘consider the potential role of new innovative techniques to improve the sustainability of the food system, while ensuring that they are safe’. The policy implications for farming and food systems that rise from the future implementation of the European Green Deal deserves a broader investigation (Davies 2020). In particular, the Commission in its Communication stated that “pro-active re-skilling and upskilling are necessary to reap the benefits of the



ecological transition”. This crucial aspect has been more recently emphasised in the Commission’s Communication on New Skills Agenda on sustainable competitiveness, social fairness and resilience, in July 2020.^x

The EU policy has already instilled awareness on the interlinks and mutually reinforcing nature of the policy areas of protecting and restoring natural ecosystems, of the sustainable use of resources and improving human health (Persson et al. 2018). The European Green Deal strengthens further this approach and provides that this is ‘where transformational change is most needed and potentially most beneficial for the EU economy, society and natural environment’. For taking advantage of potential trade-offs between economic, environmental and social objectives, the Commission envisages that future policy will need to make use of all levers: regulation and standardisation, investment and innovation, national reforms, dialogue with social partners and international cooperation (Duncan et al. 2020).

According to the Commission’s view, the revised Common Agricultural Policy (CAP) will provide the opportunity to reflect the ambition of the Green Deal and the Farm to Fork Strategy. The Commission maintains to assess each Member State commitments against strong climate and environmental criteria, following the perspective that national actions should lead to the use of sustainable practices within the focus shifted from compliance to performance. The Commission started to outline some areas of intervention for improved environmental and climate performance for the programming period 2021-2027 of the CAP: the use and risk of chemical pesticides as well as the use of fertilisers and antibiotics, the increase of area under organic farming and the potential role of new innovative techniques to improve the sustainability of the food system.

3. The Farm to Fork Strategy of the EU Commission

While the European Green Deal provides a commitment to make Europe the first climate-neutral continent by 2050, the Farm to Fork Strategy is placed at the heart of the challenge of sustainable food systems and addresses comprehensively the links between ‘healthy people, healthy societies and a healthy planet’. Food systems is one of the key drivers of climate change and environmental degradation in Europe. The European Union



is thus addressing the challenge of reducing its environmental and climate footprint, while managing the dependency on pesticides and antimicrobials, reducing excess fertilisation and reversing biodiversity loss.^{XI} The approach adopted by the Commission is systemic and involve all citizens and business operators across farming and food value chains. The Strategy takes into account the impact of the current COVID-19 pandemic and the economic downturn in planning the transition to a fair, healthy and environmentally-friendly food system (Elkerbout et al. 2020). Following the line already established in the Green Deal, such a shift is understood as an opportunity to offer economic gains while the recovery from the crisis may put all Member states into a sustainable path. In this view, the COVID-19 pandemic is emphasised as a case in point to underline the urgency of building robust and resilient food system (Colli 2020). To achieve this goal, the Strategy provides a roadmap to reduce dependency on pesticides and antimicrobials, reduce excess fertilisation, increase organic farming as well as improve animal welfare, and reverse biodiversity loss. The actions to address all these challenges need to be based on the awareness of the interrelations ‘between our health, ecosystems, supply chains, consumption patterns and planetary boundaries’, in the Commission’s view. While the Climate Law sets out the objective for a climate neutral Union in 2050,^{XII} the policy and legislative roadmap designed by the Strategy is aimed at ensuring that agriculture, fisheries as well as aquaculture and the food value chain play their role in this process.^{XIII}

The Strategy recognises the importance of the Common Agricultural Policy in supporting the transition to a more sustainable farming and food system that is focused on the Green Deal. The Commission recognises that the capacity of the Member States in enabling the transition will need to be duly assessed and monitored through the implementation. The role of the Commission will be key in providing recommendations to Member States on addressing the Green Deal targets and the goals stemming from the Farm to Fork Strategy. Member States will be required to set explicit national values for the targets, considering their specific situation and the provided recommendations.

To accelerate the transition, a legislative proposal establishing a common framework for a sustainable food system has been planned before the end of 2023, as provided in the action plan of the Farm to Form Strategy. According to the Commission, this proposal will be aimed at enhancing policy coherence as well as mainstreaming sustainability in food-related policies at the European and national level. Such a common policy framework will



provide comprehensive definition and general principles for sustainable and resilient food systems, addressing also the responsibilities of all chain actors.

4. The current proposal for the National Strategic Plans under the CAP 2021-2027

On June 2018, the proposal for a regulation on support for national strategic plans has been presented under the Common Agricultural Policy (CAP) for the programming period 2021-2027 and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD).^{xiv} The National Strategic Plan is recognised as a national planning tool that unifies in a single programming and management document the agricultural policies of each Member States, i.e. direct payments, sectoral interventions of the Common Market Organizations (CMO), the measure of rural development support and the State aid schemes. This will imply integrating the first and second pillars of the CAP that so far has been established separately and funded respectively by the EAGF and EAFRD.

In this framework, the national administration is considered as the only interlocutor of the European Commission in the negotiation that follows the proposal of the National Strategic Plan. According to article 92 of the proposed Regulation, Member State shall establish in the CAP Strategic Plans an intervention strategy in which quantitative targets and milestones shall be set to achieve the specific objectives,^{xv} provided under Article 6.^{xvi} Each Member State shall establish a single CAP Strategic Plan for its entire territory; however, the Regulation admits that elements of the CAP Strategic Plan can be established at regional level. Member States have to ensure the coherence and the consistency with the elements of the CAP Strategic Plan established at national and eventually at regional level, according to Article 93. They will draw up their Strategic Plans taking in duly account relevant regional and local authorities, and they are required to organise a partnership that includes at least relevant public authorities, economic and social partners, and relevant bodies representing civil society. In particular, relevant national authorities for environment issues have to be effectively involved in the preparation of the environmental and climate actions. A vast literature has explored the role of public authorities and private stakeholders



in implementing the European Green Deal (Camilleri 2020; Heyl et al. 2020; Bocken et al. 2019; Ranta et al. 2018).

Through the National Strategic Plans, a new approach has been affirming in the CAP implementation that is based on a different division of tasks between the European Commission and the Member States and aimed at providing a greater decision-making autonomy regarding the ways of implementing policies (Mantino 2019). The European Commission defines – based on general and specific objectives set by article 5 and 6 of the Regulation - what is the minimum baseline in implementing the policies and the related indicators to measure their performance in terms of results and impacts. The previous programming periods provided a detailed definition of common rules regarding the application of individual measures; now, the revised CAP provides to the Member States the opportunity to adapt policies to their needs. This is not only in relation to rural development measures, but also to the measures under the first pillar of the CAP. However, it emerges a shift in the responsibility that is transferred from the European Commission to the Member States. In this framework, the Commission evaluates the Plan presented by each Member State and approves it whether it is internally consistent with the baseline and all the objectives are adequately quantified (Erjavec et al. 2018). Implementation would be monitored and assessed against expected objectives and results, rather than financial reporting. In the Commission's view, Strategic Plans will also provide a needed simplification in the architecture of the reporting system under the CAP. It will allow to change from the current 28 notifications for direct payments, 118 Rural Development Programmes, 65 sectoral strategies under the CMO to 27 National Strategic Plans.

The CAP Strategic Plans leaves room for many questions that have to be clarified in order to move on to its implementation and to exploit its role in supporting the transition envisaged in the Green Deal and the Farm to Fork Strategy: how to integrate the different parts of the CAP (direct payments, sectoral interventions through CMO, rural development measures) into a coherent strategy? what new challenges will national institutional bodies face after the approval of the National Strategic Plan in terms of coordination, management and control?

Some critical points have been already discussed by the European Court of Auditors in its Briefing Paper on March 2018.^{XVII} The Court highlighted *inter alia* the lack of clear,



specific and quantifiable objectives and targets as well as the weakness of the links between types of intervention and objectives, such as between direct payments and food security. Moreover, the Court also observed the absence of transparent criteria that the Commission uses for assessing the content and quality of the National Strategic Plan. This last point is considered particularly problematic as it may not allow a consistent assessment of the Plans and may tend to be based on criteria established time to time by the specific desk officers for the Member States (Mantino 2019). This may also result in a scenario where different levels of ambition correspond to different administrative, analytical and strategic capacities of national authorities. While it may be true that flexibility allows Member States to decline the CAP according to their ambitions, it is equally true that some administrations have the ability to think and manage more complex actions better than others that do not have the same capacity (Pupo D'Andrea 2019). Furthermore, different approach on climate and environmental issues at national level could lead to different levels of ambition, and also substantially diverging from the level of commitments required by the Green Deal. Such concerns are strengthened by the consideration that such a new approach is based on instruments that remain substantially unchanged from the current programming period (Pupo D'Andrea 2019).^{xviii}

Whatever the scenario, many countries have already started a series of preparatory activities and *ex ante* analysis. The Strategic Plan may enhance a scenario analysis based on a more *macro* perspective that focuses on the current evolution of farming and food system and understand how to allocate resources between the two pillars and between the different measures as well as to provide a further coordination that can follow the ambition of the Green Deal and the Farm to Fork Strategy as envisaged by the EU Commission. A similar activity should start at the national level with the involvement of the various stakeholders of the national and regional partnership.

5. Concluding remarks

The entry into force of the new Common Agricultural Policy in the European Union may provide room for analysing further its impact and potential for contributing to the achievement of Sustainable Development Goals, thanks also to the change in the



institutional set-up as a result of the EU election in May 2019. The ambitious policy pathway - undertaken by the EU Commission with the Communication on the *European Green Deal* and the more recently *Farm to Fork Strategy* – will need to be explored further in establishing the Common Agricultural Policy for the programming period 2021-2027.

One could argue that through the National Strategic Plan a new approach is introduced in the CAP implementation. Member States have a greater decision-making autonomy regarding the ways of implementing policies and designing intervention on the basis of the baseline provided by the European Union. This may accelerate and facilitate for the Member States to take up the challenge of building a national planning tool that contributes to making the EU's economy more sustainable and building a fair, healthy and environmentally-friendly food system. However, many critical points are emerging. In particular, the lack of clear, specific and quantifiable objectives and the weakness of the links between types of intervention may result in a scenario where different levels of ambition correspond to different administrative, analytical and strategic capacities of national authorities. Moreover, different national awareness on climate and environmental issues may acquire an expected relevance. This new approach has suggested to some commentators that it may represent a first step in the renationalisation of the Common Agricultural Policy (Pupo D'Andrea 2019).

It is arguable that the ambitious action plan of the EU Commission envisaged in the Green Deal and the Farm to Fork Strategy will play a central role in the following months and years for ensuring that Strategic Plans are based on robust climate and environmental criteria. Given that the start of the revised Common Agricultural Policy is expected at the beginning of 2022, the Commission committed to closely work with the Member States and stakeholders to ensure that from the first draft the national strategic plans fully reflect the ambition of the Green Deal and the Farm to Fork Strategy.

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^I *Reflection Paper: Towards a Sustainable Europe By 2030*, European Commission, COM(2019)22 of 30 January 2019

^{II} *Transforming our World: the 2030 Agenda for Sustainable Development*, adopted by the UN General Assembly Resolution, 25 September 2015, A/RES/70/1

^{III} *Sustainable development in the European Union. Monitoring report on progress towards the SDGs in an EU context*, Eurostat, Statistical Books Collection, 2020

^{IV} *Delivering on the Environmental Dimension of the 2030 Agenda for Sustainable Development*, Information Note of the Executive Director, United Nations Environment Assembly of the United Nations Environment



Programme, UNEP/EA.2/INF/4

^V *Report of the high-level political forum on sustainable development convened under the auspices of the Economic and Social Council at its 2019 session*, High-level political forum on sustainable development, E/HLPF/2019/7

^{VI} European Commission, *Evaluation study of the impact of the CAP on climate change and greenhouse gas emissions*, Publications Office of the European Union, 2019

^{VII} *The European Green Deal*, Communication from the European Commission, COM(2019) 640 final

^{VIII} *A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system*, Communication from the European Commission, COM(2020) 381 final

^{IX} Ursula von der Leyen, *A Union that strives for more. My agenda for Europe: political guidelines for the next European Commission 2019-2024*, available at <https://op.europa.eu/en/publication-detail/-/publication/43a17056-ebf1-11e9-9c4e-01aa75ed71a1>

^X *European Skills Agenda for sustainable competitiveness, social fairness and resilience*, Communication from the European Commission, COM(2020) 274 final. This novel Skills Agenda is based on the Skills Agenda adopted in 2016 and aimed at unlocking the potential of the Recovery Plan for Europe. See also *A New Skills Agenda for Europe. Working together to strengthen human capital, employability and competitiveness*, Communication from the European Commission, COM(2016) 381 final.

^{XI} See also *Biodiversity Strategy for 2030 Bringing nature back into our lives*, Communication from the Commission, COM(2020) 380 final. In the Commission's view, biodiversity is crucial for ensuring EU and global food security. To support the long-term sustainability of food systems and 'bringing nature back to agricultural land', this Strategy is intended to work synergistically with the Farm to Fork Strategy and the Common Agricultural Policy (CAP) 2021-2027.

^{XII} Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM(2020) 80 final

^{XIII} See Annex to *A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system*, Communication from the European Commission, COM(2020) 381 final

^{XIV} Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council, COM(2018) 392 final

^{XV} Under article 3, the proposed Regulation provides a clear definition of *targets* as 'pre-agreed values to be achieved at the end of the period in relation to the result indicators included under a specific objective', and *milestones* as 'intermediate targets to be achieved at a given point in time during the CAP Strategic Plan period in relation to the indicators included under a specific objective'.

^{XVI} Article 6 provides that the achievement of the general objectives needs to be pursued through the following specific objectives: '(a) support viable farm income and resilience across the Union to enhance food security; (b) enhance market orientation and increase competitiveness, including greater focus on research, technology and digitalisation; (c) improve the farmers' position in the value chain; (d) contribute to climate change mitigation and adaptation, as well as sustainable energy; (e) foster sustainable development and efficient management of natural resources such as water, soil and air; (f) contribute to the protection of biodiversity, enhance ecosystem services and preserve habitats and landscapes; (g) attract young farmers and facilitate business development in rural areas; (h) promote employment, growth, social inclusion and local development in rural areas, including bio-economy and sustainable forestry; (i) improve the response of EU agriculture to societal demands on food and health, including safe, nutritious and sustainable food, food waste, as well as animal welfare'.

^{XVII} European Court of Auditors (2018), *Future of the Cap*, Briefing Paper, March 2018

^{XVIII} While direct payments changed in their operation, their typology and the overall structure remains unchanged, with the only exception being the elimination of green payments.



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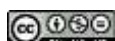
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**Addressing the limits of autonomy: Origin,
organization and purpose of horizontal
intergovernmental forums in three federations**

by

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Abstract

Horizontal intergovernmental forums that bring together the constituent units of a federation are increasingly common. This article examines the origin, organization and purpose of the premium horizontal intergovernmental forums in Kenya, Spain and Canada. The constitutional origin of institutions of horizontal intergovernmental relations is uncommon. The experience of the three political forums confirm the view that institutionalization of intergovernmental relations may not be a necessary condition for effective intergovernmental relations. Yet, in countries with no history of multilevel governance or a culture of cross-boundary interaction, institutionalization might give horizontal intergovernmental relation the prompt it needs. Despite the expectation that they will focus on facilitating horizontal collaboration, however, the forums are focused on creating a common front against the national government. They may be horizontal in their structure but vertical in their orientation.

Keywords

Horizontal intergovernmental forums, Council of Federation, Council of County Governors, Conference of Autonomous-Community Governments

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1. Introduction

Horizontal intergovernmental forums that bring together the constituent units of a federation are increasingly common. They are distinguished from vertical forums in their exclusion of national governments. They, however, come in different forms. They could be summit forums that bring together the leaders of subnational units. They could be sectoral structures that bring together persons responsible for the relevant sector in their respective subnational governments. They could be forums that involve all subnational units or structures that involve only some of the subnational units, often based on regional, linguistic or other bonds. In some occasions, they are bilateral. Mostly, however, they are multilateral.

This article examines the origin, organization and purpose of horizontal intergovernmental forums in three federal jurisdictions across three continents: Kenya, Spain and Canada. In order to do so, it focuses on summit forums (also known as political forums) that bring together the leaders of the different subnational governments. The focus is thus on the Council of Federations [COF], the Council of County Governors [CCG] and the Conference of Autonomous-Community Governments [CAG], the premium horizontal intergovernmental forums in Canada, Kenya and Spain respectively. The countries are not selected because they provide a representative sample of horizontal intergovernmental forums. They are chosen in order to examine the different experiences of intergovernmental forums in three different jurisdictions.

The rest of the article is structured as follows. The article commences the discussion by tracing the origin of the three intergovernmental structures, focusing on the constitutional framework within which intergovernmental relations operate in the three federations. The article then discusses the organization of the three horizontal intergovernmental structures. That is followed by a discussion that examines the purposes of the structures. The article concludes the discussion by offering some comparative observations.

2. Origin

Horizontal intergovernmental relations have a long history in Canada. The first meeting of Canada's premiers dates to 1887 when Premier Honore Mercier of Quebec convened what is then known as the interprovincial conference (Meekinson 2002). Presided by



Premier Oliver Mowat of Ontario, the conference brought together five (of the seven) provinces. It did not, however, immediately develop into a regular event. In fact, between 1887, when the first conference took place, and 1926, after which the inter-provincial conference went dormant, only six conferences were held. The interaction between provincial governments became more regular when the inter-provincial conference was rebranded and re introduced as Annual Premiers' Conference (APC) in 1960, again upon the initiation of the premier of Quebec. The ten premiers continued to meet every year and the Conference developed into an important arena of inter-provincial collaboration though not so immediately. By the time the leaders of the three territories (i.e. Northwest territories, Nunavut and Yukon) joined as equal members of the conference in 1990s, after initially attending the conference as observers, the APC have already become an important arena not only for collaborating on inter-provincial issues but also for forming a common position in negotiations with the federal government. It was only after 40 years of regular meetings that a decision was made, again based on a proposal made by the Government of Quebec, to create the COF in 2003.^I Although the idea originally proposed by Quebec envisaged the establishment of an intergovernmental council that brings together the federal government and the provinces,^{II} the premiers decided to limit the COF to a forum for horizontal collaboration. That makes the COF a slightly institutionalized version of the APC.

By the time the COF was celebrating its fifth-year anniversary, the seeds of horizontal intergovernmental structures were just being planted in Spain (Segui 2013).^{III} In 2008, a number of Autonomous Communities amended their statutes of autonomy. That same year, in a meeting held in Zaragossa, those same Autonomous Communities, upon the initiative of the Government of Aragon, agreed to establish a forum through which they can harmonize the implementation of their new statutes. That gave birth to the Meetings between Autonomous Communities for the Development of the Statutes of Autonomy, a forum that was aimed at 'pool[ing] together the issues that affect or interest them, to exchange information, and to set up lines of action that can lead to the signature of cooperation agreements or the creation of collaborative tools for a better performance of their powers in the interest of citizens' (Segui 2013: 242). The forum met quiet frequently and regularly. Between 2008 and 2010, it met eight times and was able to adopt six statements and managed to conclude eleven agreements or protocols (Gálvez and and Ruiz



2013).^{IV} The Autonomous Communities were able to form a common position vis-à-vis the national government on a number of issues, including the division of powers, the role of the autonomous Communities with respect to decisions made by the State with regard to EU, the Senate and state subsidies. They have also developed ‘an early warning system’ that is used ‘to detect if there is draft legislation by the central government that might encroach upon AC competences’ (Morales 2013: 100). The forum has also facilitated horizontal collaboration in the delivery of services through the conclusion of agreements and protocols in several sectoral areas (Gálvez and Ruiz 2013). Perhaps it is the relative success of the forum that encouraged the establishment of a broader and more regulated horizontal intergovernmental institution. But it was only after seven meetings that, in 2010, the original members of the forum were joined by the other autonomous communities and a decision was made to establish CAG (León & Pereira 2011). Its first meeting was held in March 2011.

As an institution whose establishment was only envisaged in a constitution that is only adopted in 2010 and a country that does not have a recent history of federalism, the horizontal forum in Kenya has, in contrast, a very short history. Article 40 of the Constitution envisages an act of parliament that establishes intergovernmental forums (Kenya Constitution 2010). This was realized when the parliament adopted the Intergovernmental Relations Act No. 2 of 2012 (hereafter IGR Act), which ‘establishes a framework for consultation and co-operation between the National and County governments and [most importantly for our purpose] amongst county governments’. Article 19 of the IGR Act declares the establishment of the CCG, which shall consist of the governors of the forty-seven counties.

From the foregoing, with the exception of Kenya, it is clear that the origins of the horizontal forums were evolutionary and incremental. In the case of Canada, the introduction of the COF was preceded by hundred years of informal but well structured horizontal interactions. It evolved from the early days of being a social gathering to a forum where social interactions have become a side show and more serious issues have taken centre stage. Spain does not have a history of hundred years of intergovernmental forum. Nevertheless, what is also notable in the case of Spain is also the incremental way in which the Meetings of the Autonomous Communities (with few members) evolved into a relatively formal horizontal intergovernmental forum that brings together all Autonomous



Communities. As Gálvez and Ruiz (2013: 234) note, the establishment of CAG was preceded by the ‘progressive increase’ in the number of Autonomous communities that attend the Meetings and ‘in the number and importance of the agreements and Protocols signed and the issues dealt with in the meetings’. The outlier here is Kenya, where intergovernmental relations has no roots. This should not be surprising given its history and tradition of unitary centralized government. A form of government that makes intergovernmental relation imperative was only introduced recently.

The contrasting history of the origin of horizontal intergovernmental forums in the three case studies raises the question whether a history of intergovernmental structures matters for the effective functioning and success of a horizontal forum. There is no doubt that a rich history of IGR and intergovernmental forums provides a country with a wealth of knowledge and experience in putting in place an effective intergovernmental forum. At least, in those cases, there won’t be ambiguities about the institutions and processes of IGR that must be employed in order to ensure a forum that meets regularly and frequently. Experience might also allow such forums to be less ambitious and adopt decisions that are sensitive to the autonomy of subnational units. Perhaps, it is fair to suppose that the continued existence and relevance of some form of horizontal forum in Canada owes to its long history of horizontal interactions.

3. The Organization

Some intergovernmental structures are more formal and institutionalized than others. There are several structural features that determines the formalization and institutionalization of an intergovernmental forum (Simmons 2004; Börzel 2000; Bolleyer 2006). This first depends on whether the intergovernmental relation is ad hoc or based in law. And if it is not ad hoc, the question is whether it is based on a constitutional or extra-constitutional rule. Another indicator is whether the forum has a clear mandate and rules of procedures, which includes pre-determined periodic meeting and rules on how its chair is determined. It also depends on whether the structure benefits from support mechanisms in a form of a technical wing and interlinked subcommittees that have clear mandates. An institutionalized intergovernmental forum would also have a support mechanism in a form



of a secretariat that is limited to providing administrative assistance or goes beyond that and advises the political forum on policy options. Equally important is also that the forum is convened regularly.

The organization of intergovernmental institutions takes different forms in the three countries. The horizontal forum in Kenya represents the most formal and institutionalized intergovernmental institution. This largely has to do with the fact that the Kenyan Constitution stands in sharp contrast to the Spanish and Canadian constitutions in its explicit embrace of intergovernmental cooperation. Although the Constitution expects each level of government to exercise its powers in a manner that respects the autonomy and distinctiveness of other governments, it also expects the two levels of government to 'assist, support and consult' with each other (Article 189 (1) (b), Kenya Constitution). It also expects them to liaise with each other 'for the purpose of exchange information, coordinating policies and administration and enhancing capacity' (Article 189 (1) (c), Kenya Constitution). It expects these to be achieved through forums and mechanisms that facilitate cooperation between the different levels of governments. More importantly for our purpose, the Constitution does not only envisage vertical interaction between the national government and the 47 county governments. It also obliges county governments to 'co-operate in the performance of functions and exercise of powers' (Art.189 (2), Kenya Constitution). The emphasis on cooperative government is also evident in the fact that the Constitution mandates the different levels of government to resolve disputes without resorting to courts through alternative dispute resolution mechanisms, including negotiation, mediation and arbitration (Art.189(3), Kenya Constitution). In short, the Constitution, drawing from its South African counterpart, declares cooperative government as an important principle of intergovernmental relations in the devolved system of the Kenyan State (Simiyu 2015).

The establishment of intergovernmental structures, as mentioned earlier, was sanctioned by the Constitution that envisaged the establishment of an Act of Parliament that provides for intergovernmental structures. The envisaged Act of Parliament, the IGR Act, was adopted in 2012. As a result, the constitutive document of the CCG is an Act of Parliament, which requires it to meet at least twice a year (Art.21, IGR Act). If requested by one third of the members of the council, the Chairperson is obliged to convene a special meeting. The Council elects both its chairperson and vice-chairperson (Art.21, IGR Act).



Both can serve for a term of one year, but they are eligible for re-election for one further term of one year. The IGR Act does not provide for the establishment of a secretariat that can provide bureaucratic support specifically to the Council. Rather, it mandates the Intergovernmental Relations Technical Committee, a shared secretariat that is also responsible for providing technical support to the Summit, to facilitate and implement the activities of the CCG (Art. 12, IGR Act). In practice, however, the CCG has opted to establish its own secretariat that is funded by determined contributions from the counties and plans to have it recognized by law (Intergovernmental Relations Technical Committee, 2018). In addition, the CCG has established 18 technical committees.

Unlike its Kenyan counterpart, the Spanish Constitution does not sanction cooperation between the national government and the Autonomous Communities (ACs) (Aja and Colino 2014). In fact, the Constitution makes no reference to intergovernmental relations or cooperation. The only closest reference that the Constitution makes to intergovernmental relations is when it regulates the conclusion of agreements between autonomous communities. Even then, it does not provide for a framework that encourages agreements between ACs. It actually makes it difficult for ACs to conclude horizontal agreements (Morales and Marin 2015).^v The Constitutional Court of Spain has, however, declared that cooperation is an integral part of the form of government that the country has adopted. According to the Court, the principle of cooperation is implicit in the territorial design of the state that the Constitution has put in place (STC 18/1982; STC 11/1986). Although the Court made the comment in a context of vertical relationship between the central government and the AC, the principle is arguably applicable to horizontal relationships.

The absence of a constitutional framework for intergovernmental relations in Spain means that the CAR, unlike its Kenyan counterpart, is not based on a constitution or any other law. Its existence and continued relevance is not legally guaranteed. Although not institutionalized, it is not completely ad hoc. It was established based on an agreement signed by the ACs. The Conference has ‘operating rules’, which outline the purpose of the conference, its composition as well as the frequency and convening of the meeting (Segui 2013). According to the rules, the highest decision-making body of the conference is the plenary session, which is expected to meet twice a year and is chaired on rotational basis. Often, the chair of the plenary session, whose term lasts until the next meeting is held,



effectively making the term of a chair six months, is a representative of the autonomous community that hosts the meeting. The Chairperson, if requested by at least nine members, is required to convene a special meeting. The CAR is supported by a Technical Commission and a permanent secretariat. Composed of at least Director Generals from the autonomous communities, the Technical Commission is responsible for ‘preparing the meetings of the conference’. The Permanent Secretary is ‘in charge of the tracking of communications, the preparation and the custody of the documents of the conference’ (Seguí 2013: 243). In addition to the Permanent secretary, each meeting of the conference has also a secretariat, which is ‘held by the Community holding the presidency’. It is responsible for convening the conference and, when necessary, organizing preparatory meeting.

Although intergovernmental relations, including its horizontal variant, as discussed earlier, have a long history in Canada that goes back to the 19th century, it has no explicit basis in the constitution. The Constitution of Canada does not include anything that resembles the principles of cooperation between the different levels of governments. In fact, the division of power that characterizes the Canadian federation, famously known as ‘watertight compartments’,^{VI} many believed, does not leave much room for intergovernmental cooperation and coordination for it to receive a constitutional recognition. That might also explain why the Constitution of Canada is silent on intergovernmental mechanisms despite the numerous and diverse intergovernmental forums that exist in the country. Like in Spain, however, Canadian courts have noted the evolving nature of Canadian Federalism that is increasingly encouraging cooperation between the different levels of governments. As the Supreme Court of Canada has itself indicated, in the Securities Reference of 2011, the Court has, since 1949, ‘moved toward a more flexible view of federalism that accommodates overlapping jurisdiction and encourages intergovernmental cooperation — an approach that can be described as the ‘dominant tide’ of modern federalism’ (Reference re Securities Act (2011) 3 SCR 837 57). It must at the same time be noted that the Court does not see cooperative federalism as the building block of the Canadian federal system. It does not force the different levels of government to act in a cooperative manner. According to the Court, it is up to the two levels of government to exercise their powers in ‘the spirit of cooperative federalism’. The Court simply suggests that a ‘cooperative approach’ might be useful ‘to ensure that each



level of government properly discharges its responsibility to the public in a coordinated fashion' (Reference re Securities Act (2011) 3 SCR 837 9). In fact, the Court was sure to emphasise the distinctiveness of each level of government and the need to respect 'the constitutional boundaries that underlie the division of powers' (Reference re Securities Act (2011) 3 SCR 837 62).

The operation of COF, unlike its Kenyan counterpart, is not based on constitution or any other law. Like its Spanish counterpart, however, the COF is not an ad hoc institution. As an institution of IGR that is based on an agreement signed by the premiers and the leaders of the three territories, however, it represents a departure from the era of the APC where the interaction, albeit regular, was informal. The agreement envisages that the Council meets at least twice a year (Art.9, COF Founding Agreement).^{vii} The premier of the chair is selected on a rotational basis, with each chair only serving one year (Art.7, COF Founding Agreement).

The COF receives bureaucratic support in a form of a steering committee and a secretariat. The steering Committee, which is composed of the deputy ministers in charge of intergovernmental relations or a representative designated by a premier of a province, assists the council by preparing 'the meetings of the Council and carry[ing] out the study, research and analysis mandates that it receives from the Council' (Art.14, COF Founding Agreement). It is responsible for giving direction and supervision of the Secretariat, which provides administrative support by way of making the necessary preparations for meetings of the Council (Art.16, COF Founding Agreement). This suggests that the work of the secretariat is administrative in nature, limited to facilitating the meetings. It does not 'serve as an instrument of research analysis and prescription' (Leclair 2006: 55).^{viii} The Secretariat, like its Kenyan counterpart, is funded by the provinces 'on pro rata basis formula according to their respective populations' (Art.17, COF Founding Agreement).

There is a long ongoing debate on whether a legal framework, in a form of a constitution or ordinary law, is essential for the effective functioning of an intergovernmental forum. The indication from the case studies is that it does not. The Constitution of Canada, the federation with the most frequent and regular intergovernmental relations and structures, makes no mention of intergovernmental relations. There is also no empirical evidence to suggest that institutionalization matters or that legally regulated intergovernmental structure does a better and enduring job of



facilitating collaboration among constituent governments. Of course, constitutionalisation and institutionalization of intergovernmental relations might promote or ensure periodic intergovernmental interactions. The reverse is not, however, true. The absence of constitutionalisation does not suggest weak intergovernmental relations. There is no evidence to suggest that intergovernmental forums that are not institutionalized unavoidably fall into a period of disuse. Intergovernmental relations that does not have constitutional recognition might be as effective as a constitutionally recognized intergovernmental relations, if not more.

Perhaps the need for formal and institutionalized intergovernmental relations depends on a context, particularly on the culture of intergovernmental dialogue in a country. In a country where there has not been a long history and practice of intergovernmental dialogue, a law that mandates such interaction might be a good idea. With respect to Spain, for example, some argue that as a country 'where a culture of political cooperation has yet to take root', Spain should have considered constitutionalizing intergovernmental relations. According to them, 'a constitutional framework that enshrines the principle of partnership and removes the obstacle for the collaboration among the different territorial powers would help to consolidate these new cooperation mechanisms' (Galvez and Ruiz 2013: 235). The same argument is advanced by Segui, who also emphasizes the need for a law that regulates intergovernmental relations in Spain. 'Providing a framework for a joint cooperation in the autonomous State can serve to eliminate the shortcomings and deficiencies of the current regulatory system, considering the lack of culture of cooperation that exists in our state' (Segui 244). Perhaps their fear is borne out by the fact that, at the end of the day, the relevance and effectiveness of CAG, depended on the wishes of some of the Autonomous Communities and literally died when those Autonomous Communities lost interest and stopped taking the initiative.

In short, what is important is that there is a shared feeling among constituent governments about the value of dialogue and cooperation. Institutionalization and formalization of intergovernmental relations may not bring about the desired result in the absence of an agreement on the values of dialogue and cooperation.



4. Decision-making

In line with the long tradition of its predecessor, the APC, decisions at the COF are made by consensus rather than by majority vote (Article 10, COF Founding Agreement). The CAG, on the other hand, follows a slightly different rule. The level of support required for making a decision depends on the nature of the decision (Glávez and Ruiz 2013: 233). If the decision is to merely make a political statement in a form of a declarations, unanimity is not a requirement. It suffices if the statement is endorsed by at least 15 Autonomous Communities. That would make the statement an official position of the forum. Unanimity is required when the decision involves the conclusion of agreements and protocols. This does not mean that an agreement may lapse if it does not secure the support of all Autonomous Communities. Members of the forum that sponsor or support the agreement are required to engage with the members that are refusing to support the agreement, struck a compromise and pass the agreement at the next meeting. If that does not happen, the agreement may be adopted by a majority vote provided that the dissenting autonomous communities do not object to the conclusion of the agreement. The agreement will not have an effect on Autonomous Communities that are not party to the agreement. The constitutive document of the CCG is silent on decision-making process.

The requirement of unanimity for decision making suggests that constituent units in Canada and Spain are unwilling to forfeit their sovereignty for the sake of horizontal collaboration. But this should not be surprising. Given the zealousness with which subnational units tend to protect their autonomy, it is not realistic to expect a decision-making process that is not based on consensus. At best, as it is the case in Spain, it might be possible for a horizontal intergovernmental forum to pass a declaration without binding effect based on majority votes. It is, however, unlikely for a subnational government to abide by decisions of others on matters that it has exclusive jurisdiction. What Collins (2015, 14) said with respect to Canadian provinces would apply to subnational governments in other federations: ‘On their own, provincial governments often have neither the interest nor the power to force each other to take certain actions to implement particular solutions’.

Even in situation where decision has been secured, none of the horizontal forums have put in place a clear mechanism to ensure that those decisions are implemented. The



subnational governments are not, for example, required to introduce mirror legislation for the purpose of implementing agreements adopted by a horizontal forum (Leclair 2006, 55). One of the main challenges of the CCG is the failure of implementation of resolutions it has adopted, which is largely attributed to the lack of enforcement mechanisms for decisions (Intergovernmental Relations Technical Committee, 2018). The conclusion of an agreement by the CAG does not entail a legal obligation on the Autonomous Communities that have expressed their support (Segui 244). It merely encourages them to take the administrative or legal actions that are necessary to implement the agreement. Failure to do so does not represent a violation of the agreement. This shows that the agreements are a little more than political statements. When the COF adopted the recommendation of its Health Care Innovation Working Group (HCIWG), the report released by the premiers simply stated that ‘provinces and territories intend to implement the measures and recommendations outlined in the report as they deem appropriate to their health care system’ (Council of Federation, 2012, 6). The discretionary tone of the statement suggests the absence of a strict obligation to implement agreements reached by member of the COF. This is not surprising given that ‘[p]rovinces do not seem eager to establish binding mechanisms that could ensure the implementation of their agreements over interprovincial matters’ (Leclair 2006, 55).

5. Purposes of horizontal intergovernmental forums

As the name itself suggests, horizontal intergovernmental forums are often deemed to be motivated by the need and desire to coordinate interactions between and among subnational governments. Horizontal collaboration seems to be the goal. This could be about exchange of information and best practices. It could also be about formulating and implementing joint projects or ensuring that citizens have access to minimum level of services when they move from one subnational unit to another (Colino 2009).^{IX} Linked to this is the desire to remove internal trade barriers and harmonize standards, avoiding situations where citizens are burdened by laws and regulations that do not recognize the licenses or permits they obtained or the educational qualification they received from other parts of the country. The same applies to companies that work across subnational



boundaries. Horizontal intergovernmental forums that can facilitate the harmonization of standards or the removal of barriers play a crucial role in the creation of one economic community.

However, horizontal collaboration may not be the only and, in some cases, even the primary focus of horizontal intergovernmental forums. Horizontal forums are also used to develop common position against the federal government. This could be about subnational governments using the forum as a means to increase their bargaining powers with federal government. It may also be about protecting jurisdictional autonomy from interventions of the federal government. Effective cooperation between constituent governments might take away from the national government the argument that it needs to intervene on a certain area on the ground that it affects all constituent units. In such cases, a forum might be horizontal in its organization but vertical in its orientation.

The purpose of the COF was one of the issues that was flagged by some of the provincial governments when the Premier of Quebec, Jean Charest, proposed its establishment (Noél 2003). The other provinces were happy to support the idea on the condition that the council does not become a forum to fight the federal government. The premier of Ontario blatantly indicated that the council should not be used as a forum to gang up on the federal government. For him and many others, it should be a forum for promoting provincial collaboration on matters of mutual interest. It was probably a commitment from the Premier of Quebec that the forum will not be used to bash the federal government that encouraged the provinces and the three territories to bring the COF into a reality.

A look at the objectives of the council indicates that horizontal collaborations forms an important part of the mandates of the COF (Art.3 & 4, COF Founding Agreement). The COF seeks to strengthen 'interprovincial-territorial cooperation' by, among other things, serving 'as a forum where members can share and exchange viewpoints, information, knowledge and experience'. It is also mandated to 'address any issue of priority, which, in the opinion of the members, requires the pooling of expertise, a greater dialogue between them or the co-ordination of their actions'. Yet, horizontal collaborations are not the only focus of the COF. The Council is expected to 'exercis[e] leadership on national issues of importance to provinces and territories and in improving federal-provincial-territorial relations'. This has two objectives. On the one hand, the aim is to use the Council as forum



to present a unified front in the face of the federal government. It is expected to achieve this by ‘provid[ing] integrated and coordinated approach to federal-provincial-territorial relations through the development of shared common analysis and positions’. On the other hand, it aims at protecting the autonomy of the provinces against the actions and laws of the federal government. The constitutive document of the Council states that the COF’s mandate is to ‘analyze actions or measures of the federal government that in the opinion of the members have a major impact on provinces and territories’.

Similarly, in Spain, the CAG seeks to serve dual purposes. The institution is expected to facilitate both vertical and horizontal interaction (Gálvez and Ruiz 2013: 233). On the one hand, it aims to facilitate dialogue and promote collaboration between the Autonomous Communities within the scope of their competences. It does so, first, by serving as a ‘forum for dialogue among the autonomous regions’ and, second, by allowing for ‘voluntary political and administrative cooperation in the field of regional powers’. But it also targets the relationship between the national government and the autonomous Communities. It strives to promote ‘collaboration between the Autonomous-Community Governments and the Government of Spain’. The dual role assumed by the forum was also reflected in the ‘institutional statement’ it adopted in its first meeting in 2011 when it stressed both the autonomy of the Autonomous Communities and the importance of collaboration with national government.

On the other hand, a quick look at the stated functions of the CCG reveals that it is expected to promote collaboration on inter-county matters. From the nine functions listed for the Council, none of them speak to the idea of using the council as a forum to forge a common front against the national government or protect the autonomy of the counties from intrusive laws and actions of the national government (IGR Act). The COG is, among other things, expected to facilitate consultation amongst county governments, sharing of information and promotion of best practices. Dispute resolution, capacity building of governors, receiving reports and monitoring the implementation of inter-county agreements on inter-county projects, considering matters referred to the council by a member of the public and consideration of reports from other inter-governmental forums on matters affecting national and county interest or relating to performance of counties are some of other the functions of the Council. Perhaps the only reference that, albeit indirectly, allows the counties to the use the forum as means to gang up against



national government is that the Council is expected to serve as a forum for ‘considering matters of common interest to county governments’. These, however, could mean both national and inter-county issues.

A quick survey of the practice of the three intergovernmental structures indicates that the three horizontal intergovernmental structures have done, to a varying degree, a good job of facilitating horizontal collaboration. The COF, for example, has done a very good job with respect to internal trade. Following in the footsteps of the APC that is largely responsible for the harmonization of interprovincial trade, the COF, albeit after initial failures that forced provinces to create bilateral agreements, managed to produce the Canadian Free Trade Agreement (CFTA) (Collins 2017: 6), an intergovernmental agreement that aims at removing barriers and facilitating internal trade. The Premiers also deservingly boast the success that the COF and its HCIWG achieved by creating the pan-Canadian Pharmaceutical Alliance (pCPA) through which the Premiers managed to put together their resources and purchased prescription drugs in bulk, which reportedly saved governments’ 712 million dollars (Health Care Innovation Working Group, 2016)). In 2010, the COF also adopted a water charter, ‘which sets out principles for inter-jurisdictional coordination on water conservation’ (Collins 2017: 7). The forum has also served as a forum to share information (Collins 2017: 10).

In the case of Spain, the CAG, following in the footsteps of its predecessor, continued to facilitate horizontal collaboration. In fact, in the first meeting, the members adopted a number of agreements and protocols, among other things, on ‘fisheries, industry, research and transport’. They have also signed a convention declaring ‘the mutual recognition of licenses for hunting and recreational freshwater fishing’ (Seguí, 244). Prior to that, individuals were required to obtain a license from each AC where they want to engage in hunting and fishing. Another convention ‘for the coordination of networks of domestic violence shelters for women’ was also signed in the first meeting.

Yet, despite their stated original aim, horizontal collaboration is not given priority by the three horizontal structures. They are more preoccupied with national issues rather than with inter-subnational matters. Creating a common front against the national government has been the primary task of the three horizontal structures. In the case of Canada, for example, one of the early successes of the COF involved the creation of common front against the national government on negotiation around health care.^x The negotiation



resulted in the adoption of the 2004 health accord, ‘a set of 10-year intergovernmental health-funding agreements’, which ‘increased federal health transfers by 6 percent a year’. ‘For many years’, Morrison (2013) argues, ‘the Council of the Federation largely provided a forum for the provinces and territories to bash the federal government and ask for more money’. This is also a sentiment shared by Leclair (2006: 55), according to whom, ‘[t]he main purpose of the council has rather been to build common fronts against what the provinces considered unconstitutional incursions by the central government in their own affairs’^{xi}

The same is true in Kenya. Despite its constitutive document that is disproportionately oriented towards horizontal collaboration, the practice of the CCG shows a forum that is used to wage a battle against national government and national institutions. Sometimes these battles were about challenging actions of national government and national politician that seem to interfere with the autonomy of county governments. In other cases, it is about securing more authority and resources from the national government. The battle was intense during the early days of the Council when Isaac Ruto was the first Chairman of the CCG. At one point, the chairman declared that the national government is waging an onslaught on devolution. He argued that ‘MPs seem determined to claw back on devolution’ and referred to ‘23 pieces of legislation which do not recognize devolution and this, [he said], we must stop’ (Daily Nation, 4 August, 2014).^{xii} At one point in time, the Council was mulling over the possibility of drafting a comprehensive Bill that aims at ‘saving’ devolution and ‘into which we will enter everything to stop any maneuvers against devolution’ (Ibid). In addition to attempting to enact an all-inclusive legislation that protects the system of devolution, the Council has also gone to court a number of times challenging the actions of national government.^{xiii} As Kangu (2019: 36) noted, the relations of the CCG ‘with the national government have been more adversarial than cooperative’.

Creating a common front is not always possible. In Canada, for example, the premiers, in 2016, attempted to renegotiate the intergovernmental health-funding agreement. After initially rejecting the proposal of the federal government unanimously, the premiers did not stay long before each of them, with the exception of Manitoba, signed individual agreements with the federal government (Collins 5). Similarly, the provinces were successful in using the COF to jointly oppose a federal government plan to reaffirm ‘its role in the labor market training’ but they were less successful in preventing the federal



government from introducing changes ‘to the temporary foreign workers program’ (Collins 2017: 5-6). The experience is similar in Spain and Kenya. There is a limit to what a united subnational front can do in terms of pressuring the federal government to accept their wishes.

Some scholars seem to suggest that the limitation of a horizontal forum in advancing a vertical aim is inherent in the nature and design of horizontal intergovernmental forums. A national government, goes the argument, can hardly be expected to be bound by a decision of a forum of which it is not a member. In the case of the COF, for example, the provincial government can only recommend ‘a solution to the federal government’ (Leclair 2006: 55). This might be a valid point but only so if we see a horizontal forum as direct means of communicating with national government. That is, however, rarely the case. A horizontal forum does not promote a ‘vertical agenda’ by adopting a decision that binds the federal government. It is rather used as a forum for developing a common position to negotiations with the federal government. At best, it is a forum for lobbying. This means that, of course, the effectiveness of a horizontal forum presupposes the availability of an active vertical intergovernmental forum through which subnational governments can negotiate with the federal government and the existence of a link between the horizontal and vertical forum. The link could be formal, established in the form of submission of reports and decisions of the meetings of the horizontal forum as well as the inclusion of those decisions in the agenda of the vertical forum. It could also be informal, established by the nearly identical composition of the two forums.

Of the three horizontal forums discussed in this article, the CCG has a formal link with other intergovernmental structures. It is expected to submit an annual report to the summit, the apex vertical intergovernmental structure that brings together county leaders and the national government.^{xiv} The Spanish horizontal forum, the CAG, had also links with the national government as it is required to inform the national government about the outcomes of its meetings, including a report on agreements concluded in every conference. The CAG may, from time to time, invite the President of the national government to attend its meetings. Similarly, in Canada, the COF ‘may decide, from time to time, to hold special meetings to which it may invite the Federal Government’^{xv} but it does not have formal links with the vertical intergovernmental structures. It, for example, does not have a



link with the First Ministers Conference (later renamed the First Ministers' Meetings) that brings together the premiers and the federal prime minister.

As mentioned earlier, the link does not have to be formal. In the case of Canada, for example, the absence of a formal link has not totally shielded the vertical forum from the influence of positions taken and decisions made at the COF. It was only after the united position of the Premiers on the future of a health care, initially developed through the horizontal forum of the COF, was put at the First Ministers' Meetings that the 2004 Health Care Accord came into reality (Hueglin and Fenna 2015). What is crucial is the continued existence of a functioning vertical intergovernmental forum. The impact of the the COF as a horizontal forum that allows for the development of common front was, for example, limited during the Harper government that was not enthusiastic about the vertical forum and preferred to engage in bilateral terms with the provinces (Collins 2015). Prime Minister Stephen Harper had also declined repeated requests to attend meetings of the COF (Hueglin and Fenna 2015: 257). That perhaps explains the failure to renegotiate the 2004 Canada Health Accord that, as a result, expired in early 2014 (Hueglin and Fenna 2015: 257).

From the foregoing, it is clear that the Kenyan and Spanish horizontal forums have better links with their vertical counterparts. This is not always seen favorably. In Kenya, for example, some question the wisdom of requiring the CCG to submit a report to the summit (Mitullah 2012). They argue that the Summit is not required by law to discuss the reports of the Council and more importantly, it is not clear why a body composed of county governors has to submit a report to another body that is almost similar in composition. The only difference between the Summit and the COG, they argue, is that the latter does not include the President of the Country as its member.

This criticism of the reporting structure misses the important role of the horizontal structure as the forum to create a common united front against the national government. The link through reporting allows the counties to communicate the national government their common position on matters of political and constitutional importance. The link would in particular be effective if the mechanism requires the Summit to consider the report and take actions, if required. The consideration of the reports gives the counties a direct opportunity to pressure or convince the national government on the issue considered. One cannot, therefore, dismiss the value of linking the horizontal and vertical



forum through reporting. Furthermore, the fact that the Kenyan horizontal forum is linked with national and county parliaments through reports adds transparency to the activities of the forum. The only problem is that the nature of the duty of reporting imposed on the forum ‘could lead to a situation where the county assemblies receive the reports after the Summit, the Senate and the National Assembly’ (Mitullah 2012: 3). One would expect that the link with county assemblies would be given more priority and attention given that the COG is a council of counties.

The absence or presence of a link with vertical intergovernmental structure is not the only factor that determines the success of a horizontal forum as a structure for creating and sustaining a common front. Finance also matters. The financial muscle of national governments, in particular, makes it difficult to sustain a common front against the federal government. In the case of Canada, for example, its fiscal leverage allows the federal government to easily undermine provincial solidarity. ‘Small and poor provinces are particularly vulnerable to the federal “divide and conquer” strategy’ (Leclair 2006: 55). The 1999 Social Union Framework Agreement, signed by the federal government and all the provinces, except Quebec, is a good example of Ottawa’s successes when it strategically resorts to its fiscal leverage to sway poorer provinces to toe the line.

It is also often difficult for subnational governments to create or sustain a common front against the federal government when the subject matter involves matters on which the provinces have disparate interests (Collins 2017: 7). This is the case, for example, in Canada with respect to issues related to energy where a more pronounced and at times public divide between the interest of the oil rich Alberta and other provinces that have expressed their interest in energy strategy that takes climate change into account has made an agreement impossible. This shows that horizontal collaboration is difficult to achieve when the interest of the provinces is disparate.^{xvi} This is facilitated by the fact that the forum makes decisions based on consensus.

6. Conclusion

The quick survey of three horizontal intergovernmental interactions has revealed that such interactions rarely have a clear constitutional basis. With the exception of Kenya, the



constitutions of the other two federations do not sanction cooperation as an imperative mode of intergovernmental reaction. As a result, there is no constitutional provision or law that provides for the establishment of horizontal intergovernmental structures, for that matter any intergovernmental structure. That, however, does not seem to matter. The federation with the most frequent and regular interactions is Canada, whose constitution or laws do not regulate intergovernmental relations. This discounts the argument that attaches constitutionalisation of intergovernmental relations with robust and effective intergovernmental cooperation. The constitutional origin of institutions of IGR is uncommon

The experience of the three federations also reveals that institutionalization of intergovernmental relations may be useful but it is not a necessary condition for effective intergovernmental relations. The horizontal intergovernmental structures discussed here vary from the highly institutionalized CCG in Kenya to the moderately institutionalized COF and loosely institutionalized CAG. The relevance of institutionalization depends on context. In a country like Kenya where there has not been any history of multilevel governance, let alone history of intergovernmental interactions, institutionalization might have given it the kick start it needs. It probably has allowed the country to develop the habit of engaging in intergovernmental dialogue. The same might be true for Spain where there has not been a 'culture of cooperation and dialogue'. What is equally clear, however, is that effective intergovernmental relation may take place even in the absence of a formalized and institutionalized intergovernmental structure.

Finally, horizontal intergovernmental structures may not be functioning in manner that their name suggests. Despite the expectation that they will focus on facilitating horizontal collaboration, they are invariably focused on matters that involve the national government. They may be horizontal in their structure but vertical in their orientation. They are used as forums to create a common front against the national government or a forum to protect the autonomy of the units from what they regard as intrusive actions of the federal government.

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¹ The establishment of such a forum was first proposed by Premier Daniel Johnson of Quebec in 1994. That did not materialize due to the electoral success of *Parti Québécois* that was not really interested in strengthening the federal system. The idea was resuscitated when the Quebec Liberal Party came to power in 2003.

¹¹ The 2001 Pelletier Report, as it was known, named after the Intergovernmental Relations Minister Benoit



Pelletier, who drew the report, included not only the membership of the federal government but also a voting system that included vetoes. The report even envisaged the possibility of providing the forum a quasi-constitutional status. The Quebec government at the time (the Charest government) was not confident that the other Premiers would endorse the establishment of an intergovernmental forum that has a quasi-constitutional status (Collins 2015). The Premiers were also in agreement in the decision to exclude the federal government from the forum, preferring to make it a purely horizontal institution of IGR (Collins 2015).

^{III} The Constitution of Spain acknowledges the possibility of cooperation agreements between Autonomous Communities although such agreement is subject to authorization by the *Cortes Generales*, the national parliament (Article 145, Spanish Constitution). It is reported that the number of cooperation agreements between Autonomous Communities has seen a steady rise since 2006. But despite the numerous horizontal agreements concluded between Autonomous Communities, institutionalized horizontal intergovernmental relations was non-existent in Spain. Many of the horizontal agreements did not also involve many Autonomous Communities but were usually concluded between Autonomous Communities that happen to share borders and, as a result, found it necessary to cooperate in order to solve common problems. (Morales, 96).

^{IV} It is reported that there were about only 20 cooperation agreements signed between Autonomous Communities between 1978 and 2005. This number doubled within a period of five years after 2005, with more than 40 agreements being signed between 2006 and 2011, with the significant increase in the number of agreements attributed to the Meetings Between Autonomous Communities (Morales 99).

^V It prohibits the federation of Autonomous Communities. This was not seen as a big problem as the Autonomous Communities were initially focused on consolidating their autonomy and gave little or no attention to the need for intergovernmental relations.

^{VI} It was Lord Atkin in 1937 that famously described the division of powers between the federal and provincial legislatures as 'watertight compartments' (*Attorney-General for Canada v. Attorney-General for Ontario*, [1937] A.C. 326, at p. 354).

^{VII} Its predecessor, the APC, used to meet only once a year. The COF has not only increased the frequency of meeting to two but has actually met twice every year except in 2010, 2011 and 2014. In fact, there were years when it met five times (twice), four times and three times (three times).

^{VIII} The agenda of the meeting of the CCG is determined by the chairperson and vice chairperson of the Council. This includes the date, time and venue of the meeting. This, however, has to be done in consultation with the secretariat. In the case of the COF, the founding agreement is silent on agenda setting.

^{IX} In the case of Spain, for example, Colino (2009, 1) notes that '[c]omplaints about the need of 17 different authorizations and standards for citizens or companies operating around the country, the reported cases of difficulties in getting free health care for travelling citizens in other regions, and other cases of lacking coordination have newly brought to public attention some dysfunctionality in areas of exclusive regional jurisdiction'.

^X The same is true with the first meeting of the Premiers in 1887. Despite the fact that it was declared that the purpose of the conference is to promote collaboration on provincial matters, the first conference ended after proposing '17 constitutional amendments' that, among other things, targeted national government and its institutions. ... The five-point plan of action it adopted immediately after the establishment of the Council reveal as much.

^{XI} Collins (2015) disagrees with this view and hold that the business of the COF is not disproportionately focused on federal-provincial matters.

^{XII} 'He listed posting of county commissioners, prohibiting governors from flying flags, creating a summit for deputy governors, and attempts to take over some of their functions such as health and early childhood education as examples of the war against devolution' (Daily Nation 2014).

^{XIII} This was the case, for example, when they challenged the 2014 County Government Act that established County Development Boards. The Boards, chaired by Senators, are empowered to control initiation and approval of development projects in counties. The County governors, who are supposed to serve as secretaries of the boards, opposed the act on the ground that it is anti-devolution as it interferes with the autonomy of county governments. It was the CCG that went to court and secured a ruling that declared the Act 'null and void as it gave senators, MPs and the executive unlawful powers to interfere with county governments' (Daily Nation 2014).



XIV The CCG is also linked with parliaments of both national and county parliaments. It is required to submit annual report to both house of the national parliament. In addition, the same report must be forwarded to the county assemblies 'within three months after the end of every financial year'.

XV It has, however, placed under it at least two sectoral horizontal intergovernmental councils: The Premiers' Council on Canadian Health Awareness and the Secretariat for Information and Co-operation.

XVI This also explains why it has been impossible for the COF to facilitate agreement among the provinces and the territories on matters of climate change. The interests of the oil and natural gas rich provinces and the other provinces has made it impossible for the COF to broker a common provincial/territorial position on the matter.

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The Normative Dimension of EU-ASEAN Relations: A Historical Perspective

by

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Abstract

This article provides a historical reconstruction of the normative dimension (principles, norms, values) of EU-ASEAN relations, with particular reference to the EU's inclination and attempts to make them an instrument for the diffusion of democracy, human rights and the European model of regional integration in Southeast Asia. Taking into consideration the normative interaction between the two organizations, fueled by particular breaches of democratic principles in Southeast Asia such as the Myanmar case, we focus on the dynamics of construction and de-construction of the EU's and ASEAN's political identity, in the framework of the evolution of the interregional relations. The evolution of asymmetry of power relations between the EU and ASEAN is particularly important in this analysis. The gradual rebalancing of power asymmetries between the two organizations, associated with the rising relevance of Southeast Asia and ASEAN on the world stage, has affected the cohesion among member states on normative issues and restricted the EU's ideational influence on the partner organization. Moreover, this process has induced the EU to adjust its policy towards ASEAN and to rethink the role of European norms in its relations with Southeast Asia.

Keywords

interregionalism; EU-ASEAN relations; democracy; human rights; regionalism promotion



1. Introduction

The promotion of liberal values such as democracy, human rights, rule of law, on the one hand, and of regional integration on the other, have become in the 1990s two pillars of the European Union's external identity.

With the Maastricht Treaty (1992), the EU explicitly included for the first time the promotion of democracy and human rights into the fundamental objectives of its foreign policy, something that no other international actor had done before (TEU, art. 11; Balfour 2006; Smith 2014). Democracy is also at the heart of the very European integration project, which was supported by the US after WWII as an instrument to ensure a 'democratic' peace on the continent. EU's member states and supranational institutions share a democratic identity, from which the EU believes to derive its legitimacy and effectiveness in promoting democracy elsewhereⁱ. At the same time, the Maastricht Treaty launched the EU on the world scene as a new economic, political and even monetary actor in the making, which relaunched regionalism promotion as one of the pillars of its foreign policy (Finizio 2015b: 132)ⁱⁱ.

While the EU is not the only actor which promotes liberal values beyond its borders, the promotion of regionalism and its inclination to build interregional relations makes it unique in international relations. No other actor considers regional organizations which it promotes and supports as its privileged partners, or no other actor does it to the same extent (Smith 2014: 67). On the one hand, through its interregional relations the EU promotes the development of regional integration experiences on other continents, in some way, trying to export its own model, which has been described by some authors a laboratory of international (or cosmopolitan) democracy (Levi 2014: 16-17; Archibugi 2008: 109-112), and which the Union itself considers 'the only successful example of regional integration so far' (European Commission 1995: 8)ⁱⁱⁱ. In the EU's vision, the promotion of 'regionalism through interregionalism' (Doidge 2011: 50) help create the conditions for development and stability in other regions, and can pave the way to the construction of a post-Westphalian order based on the overcoming of the anarchical structure of international relations (Telò 2006: 227-228). On the other hand, interregional relations are used by the EU as an instrument to influence the political identity of partner organizations, bringing them closer to liberal values on which the very European integration process is based. Through these objectives, the EU attempts to legitimize its role as a civilian power and an international actor (Söderbaum, Stålgren, Van



Langenhove, 2005; Vasconcelos 2007: 179). Ian Manners and other authors after him, focusing on processes of ideational diffusion promoted by the EU and trying to theorize the EU's actorness in world politics, have described it as a 'normative power', which refers to the EU's ability to shape conceptions of the 'normal' in international relations (Manners 2002: 239), and to its predisposition to put a particular set of norms (understood here as 'shared – thus social – standards of behaviour' (Klotz 1995: 14)), principles and values at the centre of its relations with other parts of the world (Manners 2002: 252; Tereszkiewicz 2020: 97)^{iv}.

This article provides a historical reconstruction of the normative dimension (principles, norms, values) of EU-ASEAN relations, with particular reference to the EU's inclination and attempts to make them an instrument for the diffusion of democracy, human rights and the European model of regional integration in Southeast Asia. Taking into consideration the normative interaction between the two organizations, fueled by particular breaches of democratic principles in Southeast Asia such as the Myanmar case, we focus on the dynamics of construction and de-construction of the EU's and ASEAN's normative identity, in the framework of the evolution of interregional relations. The evolution of asymmetry of power relations between the EU and ASEAN is particularly important in this analysis. As it will be shown in this article, the gradual rebalancing of power asymmetries between the two organizations, associated with the rising relevance of Southeast Asia and ASEAN on the world stage, has affected the cohesion among member states on normative issues and restricted the EU's normative influence on the partner organization. Moreover, this process has induced the EU to adjust its policy towards ASEAN and to rethink the role of European norms in its relations with Southeast Asia.

2. The EU and the ASEAN's Normative Identity

ASEAN was established in 1967 by Indonesia, Thailand, Malaysia, Singapore and the Philippines with the aim to oppose the expansion of communism, to limit the military influence of external actors (such as China, Japan, USSR, and the West) in the region and the hostility among member states (Migani, 2018: 126), and to promote socio-economic development in an atmosphere of mutual suspicion, low-intensity conflicts as well as persistent domestic threat to state authority (Kraft 2014: 331). Not surprisingly, ASEAN



normative approach, known as ‘ASEAN Way’, is very different from the European Union one. In fact, ‘ASEAN Way’ is based on the one hand on regulatory principles such as the absolute centrality of state sovereignty, non-use of force, non-interference, peaceful settlement of disputes (ASEAN 1976: art. 2); on the other hand, it includes a set of procedural rules in collective decision-making, such as the systematic search for consensus, pragmatism, informality, non-confrontational negotiation style (Haacke, 2003, 8). Moreover, as widely acquired in the literature, ASEAN’s development has explicitly avoided replicating the EU model of regionalism, based on sovereignty pooling, formal and bureaucratic institutions, legalistic decision-making, and majority voting in most decisions (Haacke, 2003; Garnaut and Drysdale 1994). This tendency, resembling in some way the African experience (Finizio 2020: 38-41), is rooted in history (Beeson and Stone 2013: 169-170). Southeast Asian states, products of a relatively recent decolonization from European imperialism, ‘were born in a fraught geopolitical environment and have had to create nation-states, identities and functioning economies in an international system dominated by extant European powers and, more recently, the US’ (Beeson and Stone 2013: 170). As a consequence, these states remain concerned with protecting domestic sovereignty, and are consequently preternaturally sensitive to possible infringements on domestic autonomy, which the ASEAN Way is designed to protect. While European integration was launched to transcend state sovereignty overcoming nationalisms in Europe, Southeast Asian regionalism was conceived to promote security and development in the region preserving and defending national sovereignty.

Not surprisingly, the promotion of democracy and human rights were not among ASEAN’s objectives, and even today, democracy is not part of the organization’s identity, especially as it is still far from being the shared method of government in the region and is still considered a possible cause of instability for member states’ regimes (Finizio 2015a: 145).

The EU’s bi-regional relationship with ASEAN dates back to 1978, with the main stimulus coming from Hans-Dietrich Genscher, German Foreign Affairs Minister holding the rotating Presidency of the Council, in order to increase relations with an area of the world which was of strategic importance for raw materials and economic growth (Migani 2018: 127)^v. However, democracy and human rights became part of the political dialogue between the two organizations only after the end of the Cold War. In fact, in the 1970s and 1980s human rights issues occasionally had come up on the agenda of the European Political Co-



operation (EPC), but had been usually addressed, in passing, only in common declarations (Nuttall 1992); moreover, for the Community, using trade agreements to punish human rights abuses was unacceptable, and it maintained a ‘neutral’ stance vis-à-vis the human rights records of third countries (Smith 2014: 100). In the 1990s, because of the end of the Cold War, Western governments no longer had to support authoritarian governments in developing countries. Moreover, findings by the World Bank that the failure of reforms in Sub-saharian Africa was partly the result of bad governance (World Bank 1989), and the need to raise public support for foreign assistance programs, encouraged the EC/EU to follow the international consensus on aid conditionality, and to attempt to produce normative changes within ASEAN and its member states by promoting an identity based on democracy, rule of law, human rights, and good governance.

ASEAN’s stance regarding democracy and human rights became clear very soon, however. On the one hand, the Joint Declaration of the 9th ASEAN-EC Ministerial Meeting of May 1991 stated that ‘The Ministers were of the view that international cooperation to promote and encourage respect for human rights and for fundamental freedoms for all without distinction of race, sex and religion should be enhanced’ (ASEAN-EC 1991). On the other hand, the communication of the 24th ASEAN Ministerial Meeting of July of the same year stated that ‘when the issue of human rights is linked to trade, investments and finance, ASEAN cannot but view it as added conditionalities and protectionism by other means’ (ASEAN 1991: para 7), and that ‘while human rights is universal in character, implementation in the national context should remain within the competence and responsibility of each country, having regard for the complex variety of economic, social and cultural realities’ (para. 15).

In the aftermath of the 1993 UN Vienna Conference on Human Rights, ASEAN’s position was made even clearer:

Human rights are interrelated and indivisible comprising civil, political, economic, social and cultural rights. These rights should be addressed in a balanced and integrated manner and protected and promoted with due regards for specific cultural, social, economic and political circumstances. [...] The promotion and protection of human rights should not be politicized [and should] take recognizance of the principle of respect for national sovereignty, territorial integrity and non-interference in the international affairs of the states (ASEAN 1993: paras. 16-17).



The very Conference of Vienna became the theatre of the clash between the positions in favour of and against universalism of human rights (Boyle 1995: 86-88), and as a result the normative gap between Europe and Southeast Asia grew more and more evident. The 'Consensus' on universality reached in Vienna must be viewed against the background of the preparatory statements issued by the African group (Tunis Declaration, December 1991), the Group of Latin America and the Caribbean (San José Declaration, January 1993), and the Asian group (Bangkok Declaration, April 1993). The most forceful in arguing its divergence from Western doctrine was the Bangkok Declaration, which stated that 'While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds'^{vi}. Countries such as Malaysia, Singapore and Indonesia had placed themselves as bastions of relativism, arguing that 'human rights are culturally defined, and every country should promote human rights as its culture prescribes, free from interference by outside agencies' (Puchala, Laatikainen, Coate 2007: 76)^{vii}.

Thus, ASEAN, in line with its normative identity, was willing to engage Europe on democracy and human rights, but without been subject to any kind of imposition or interference. However, the very construction of ASEAN's normative identity was deeply influenced by the interaction with the EU (and the West in general) and was sustained by a relative increase in the economic significance of Southeast Asian countries, which strengthened self-confidence at the political level. Furthermore, it revolved around the so-called 'Asian values debate', in relations to which the Myanmar Affaire played a key role.

3. EU-ASEAN Normative Interactions and Its Impact on Bi-Regional Relations: The Myanmar Case

In the early years of ASEAN's existence, the EU had conferred this organization a low profile in its external relations, and was reluctant to view it as an important actor in regional and global governance. Suffice to say that Southeast Asia lied at the bottom of the EU priorities, below Africa, South Pacific, Latin American countries (Yeo 2008: 61).

In the 1990s, the European integration project was revitalized by the Maastricht Treaty, which proposed to the world the EU as a rather new economic, political – with the new



Common Foreign and Security Policy (CFSP) – and even monetary actor in the making (Dedman 2010). The EU started to be celebrated, and also to celebrate itself, as the best supporter of global governance, as well as the champion of liberal values and of regional integration (Kupchan 2003; Rifkin 2005; Leonard 2005). As a consequence, the EU saw itself (implicitly or explicitly) as an actor entitled and able to transform and unify the world along regionalist and liberal lines (European Commission 1995). As underlined by Vasconcelos (2007: 179), '[t]his may be a utopian vision; but it is the only vision of the world that can make sense of the common foreign and security policy of the civil power that is the European Union'. In this framework, in the 1990s the EU globalized its foreign policy, developing specific approaches and policies towards many regions of the world, including Asia (Keukeleire, Delreux 2014)^{viii}.

The idea to transform the normative identity of the ASEAN region was very ambitious, especially considering the wide gap between the two organizations (much wider than that between the EU and Latin America or even Africa) in terms of norms, principles and values, and the ongoing and increasingly evident rebalancing of interregional asymmetries. The opportunity for this exercise was offered by the breach of democratic principles in Myanmar, which has drawn the attention of the international community, leading to strong pressure from the West in particular.

The EU had started to be very critical of Myanmar's dictatorship as early as 1988, when the military forces, led by General Saw Maung, took control of the government and harshly repressed the protests for democracy, led by Aung San Suu Kyi. The strategy to promote democracy in Myanmar was twofold. On the one hand, the EU struck Yangon first with a military embargo in 1990, then with the suspension of cooperation on defence and non-humanitarian bilateral aid the following year. Although constructive engagement is normally the EU's preferred approach, few other countries have been targeted so much (Smith 2006: 155), and sanctions against the military junta were later tightened and increased in 1996 and in 1999. On the other hand, the Union used the political dialogue with ASEAN as a means of condemnation of Yangon's policies and of debate and criticism of Asian values, first and foremost the principle of non-interference (Loewen 2008). In other words, the EU used political dialogue to engage a normative interaction to transform the political identity of ASEAN and induce it to pressurize Yangon towards democratization. The EU tried, for instance, to prevent Myanmar from joining ASEAN by dissuading its member countries



from accepting the country. Furthermore, when in 1997, Yangon acceded to ASEAN, the EU reacted with its refusal to extend the 1980 EC-ASEAN Cooperation Agreement to Myanmar, excluding the country from development assistance programs and refusing to sit at the same table with the representatives of Yangon. As early as July 1993, post-Vienna, in a EU-ASEAN Post-Ministerial Conference, President of the Council and Belgian Foreign Minister Willy Claes argued, on the subject of Myanmar, that ‘an approach other than that of the EC was possible [...], but ASEAN countries [needed] to show their “critical dialogue” with Burma had led to progress in this country as far as the protection of human rights is concerned’ (quoted in European Parliament 1993: 8). However, the EU saw ‘no reason to change [its] approach’ (ibid.).

As underlined by the then foreign minister of Singapore S. Jayakumar in his *memoires* (2015, 77-78), the EU’s approach and decisions were rejected by ASEAN countries, causing a stalemate in interregional ministerial meetings, as they were considered as an arrogant divide-and-rule approach. Moreover, ASEAN’s resistance toward EU’s pressures was encouraged by the changing balance between the two actors and regions. After the end of the cold war, ASEAN had been relaunched as an economic and political actor, as a consequence of the uncertainty linked to the evolution of the US military presence in the region and the new role of China. In 1992 ASEAN reformed its institutional structure, formalizing summit meetings and increasing the duties and rank of the ASEAN Secretary-General. In the same year (28 January 1992), its countries signed an agreement to create a Free Trade Area by 2003 (AFTA). In 1994, ASEAN held the first meeting of the ASEAN Regional Forum (ARF)^{ix} to discuss questions of security and conflict resolution (Narine 2008: 418). The adhesion of Vietnam in 1995, which in 1967 had denounced ASEAN as an imperialist plot, coupled with a growth rate of 7-8% until 1996, contributed to making ASEAN more assertive at an international level. The EU, on the other hand, in its first Asia Policy released in 1994 acknowledged, with some delay, the increasing relevance of South-East Asia and the imperative necessity for Europe to gain presence in the region, to balance the Japanese and the American influence as well as the organizations supported by Tokyo and Washington (such as the Asia-Pacific Economic Cooperation, APEC), and to show that the EU was not focusing only on the transition in Eastern Europe and the preparation of the East-enlargement (Migani 2018: 136). Moreover, it recognized in the Strategy that



ASEAN countries, as a consequence of these developments, ‘no longer hesitate to question our moral values and our social systems’ (European Commission 1994: 8).

Nevertheless, as noted by some Southeast Asian scholars and diplomats, the document and EU policies still reflected its Eurocentric, transformational, top-down, and to some extent arrogant approach of that time, considering South-East Asia as a norm-recipient, which should learn from EU values and comply with EU-promoted norms, even in terms of models of regional integration (Mahbubani and Sng 2017: 115).

ASEAN’s stance on Myanmar has always been consistent with the ASEAN Way, which called for avoiding direct criticism of Yangon’s regime and for rejecting economic and military sanctions in favour of quiet dialogue. In fact, although over time the lack of political reforms gave rise to a growing restlessness in the group (Acharya 2014: 225), European and Western pressures prevented the Association from openly criticizing the country (Arendshorst 2009). This position reflected the weak inclination towards liberal democracy of most ASEAN’s countries, and their effort to avoid the isolation of Myanmar, which would facilitate Beijing’s influence in the country and its hegemonic ambitions in the region (Rüland 2001: 143). Furthermore, direct and growing pressure based on sanctions and strong statements did not trigger any accommodating reaction in Myanmar or in ASEAN as a whole. In fact, although the positions within the region on Myanmar’s accession to ASEAN were not unanimous, the EU and US opposition led the other members to join together in favour of accession (finally occurred on 23 July 1997; Doidge 2011: 102). Additionally, EU economic sanctions were actually neutralized by other ASEAN countries, which provided economic aid to Yangon (Portela 2011: 86). More generally, the EU and US uncompromising policy brought about a sense of group solidarity within ASEAN around the alleged shared ‘Asian values’ and around a concept of human rights based on the primacy of the economic and social dimension, to which civil and political rights were considered entirely subordinated. In other words, ‘the way ASEAN defined itself founded upon the normative position of Asian values, was a product in many respects of its interaction with the European Union’ (Doidge 2011: 109).

Thus, EU’s direct pressure failed to move the ASEAN normative identity away from the principle of non-interference and was unsuccessful in causing the group to abandon the constructive engagement towards Myanmar. Moreover, the group, annoyed by the persistent and aggressive European rhetoric in favour of democratization and human rights, was



instead willing to block interregional relations with the EU in order to protect regional solidarity (Boisseau du Rocher 2013: 208).

Not surprisingly, the observers did not attribute the democratic developments that followed the announcement of the Myanmar's prime Minister of 7-step roadmap towards a 'disciplined democracy' - which finally led to general elections and to the rise to power of Aung San Suu Kyi, in 2015-, to the European pressure^x, but to calculations and factors internal to the country (Acharya 2014: 225), or to the constructive engagement pursued by ASEAN and criticized by the EU: 'Clearly the ASEAN policy of engaging the military regime in Myanmar succeeded. [...] Perhaps the EU should offer ASEAN an apology for criticizing and maligning its engagement with Myanmar' (Mahbubani and Sng 2017: 115).

4. The EU as a Model of 'Democratic' Regional Governance in Southeast Asia? The Debate after the Asian Financial Crisis

For decades the EU has represented the benchmark against which all other regional integration experiences were assessed. As already mentioned, however, although ASEAN has carefully looked at the European model as a point of reference, it has intentionally avoided to replicate its features.

Nevertheless, some room for debate whether to import elements of the EU model materialized after the 1997-1998 Asian financial crisis, which exposed the weakness of existing regional economic arrangements. To some extent, the crisis undermined confidence in ASEAN's soft institutionalism, which was described by many as inadequate to address the growing transnational issues and as the cause of a huge deficit in the implementation of commitments undertaken by governments. Furthermore, civil society in particular criticized ASEAN for being too elite-driven and state-centric (Clark and Pietsch 2012: 50-51). Initiatives aimed to move the region away from the ASEAN Way and to democratize the organization were in some way backed up, at the time, by post-Suharto Indonesia. The new elites tried to project Indonesia's experience of democratization onto the region (Sukma 2008) and to regain leadership in Southeast Asia (Rüland 2014: 194, 196). Therefore, in the aftermath of the crisis, different sources in Indonesia identified the EU as a model of democratic and effective regionalism (Clark and Pietsch, 2012: 54; Fitriani 2020). Under this



pressure, ASEAN itself started, at least rhetorically, to partially accept principles such as openness to civil society, democracy, and human rights promotion and protection. The Declaration of ASEAN Concord, also known as the Bali Concord II, launched the objective to make ASEAN a ‘community of caring and sharing societies’ through the establishment of an ASEAN Community consisting of three pillars: the ASEAN Economic Community (AEC), the ASEAN Security Community (ASC; then the ASEAN Political-Security Community, APSC) and the ASEAN Socio-Cultural Community (ASCC). The ASC, in particular, strongly sponsored by Indonesia, was aimed at ensuring peaceful relations in the region in a ‘just, *democratic* and harmonious environment’ (ASEAN 2006).

The commitment to establishing an ASEAN Community was formalized through the adoption of the ASEAN Charter in November 2007 (entered into force in December 2008). The Eminent Persons Group (EPG) entrusted with the task of submitting to member states structured proposals for the drafting of ASEAN Charter, produced a report which moved the organization away from the ‘ASEAN Way’, in some respects bringing it closer to the European model. The EPG visited many times EU institutions and officials to seek inspiration. These visits resulted in the proposal to establish an ASEAN Council as the main decision-making body as well as a Committee of Permanent Representatives, to strengthen the ASEAN Inter-Parliamentary Assembly, to turn ASEAN into a ‘people-oriented’ organization, and to create an ASEAN human rights body. However, the European model, apart from a few vague references in terms of institutions and terminology, was not incorporated in the Charter. Most of the EPG’s proposals, such as the overcoming of unanimity principle in decision-making or the creation of a strong Secretariat, were diluted or rejected (Finizio 2015a: 154). Most countries in the region resisted these attempts to change the ‘ASEAN Way’, which they have interpreted as initiatives influenced by the West to further its agenda of human rights and democracy promotion (Acharya 2009: 133). Furthermore, this was partially caused by the weak leadership of Jakarta, whose elites clearly exploited the support of regionalism for nationalistic purposes, and showed to be ready to opt for extra-ASEAN bilateral relations when it better served the interests of the country (Rüland 2014: 198).



5. The EU's Policy Adjustment towards ASEAN and Its Impact on EU-ASEAN Normative Relations

Over the last decade, the EU's normative approach towards ASEAN has changed rather dramatically, as a consequence of several factors. The most important factor is the gradual rebalancing of asymmetries between Europe and Southeast Asia. Whereas the EU has long been criticized for being too narrow, expedient, and ad hoc in its approach to Asia, the Eurozone crisis has had the positive effect of finally prompting the EU to correct its relative neglect of the continent (Youngs 2014, 73). As early as 2012, the European Commission predicted that in the best conceivable scenario (called 'EU Renaissance'), the EU share of world GDP would fall from 29% in 2010 to 17 per cent in 2050 (European Commission 2012: 62, 100). Moreover, it is likely that no EU country will figure in the world's top ten economies (Youngs 2010: 8). While the financial crisis has accelerated these trends, ASEAN's average growth in the period 2012-2016 was 5,1% (OECD 2019: 1). This has paved the way to belated European efforts to catch up with Asia's ascendance.

2012 marked a turning point in this respect, to a large extent as a consequence of the impact of the Eurozone crisis on the EU and the European economies, of the continuous rise of Asia's star, and of the Obama Administration 'Pivot to Asia' Policy. In fact, 2012 was declared by the EU 'the year of Asia', as 'developing our relations with Asia across the board is a major strategic objective' (Van Rompuy 2012). A first EU-ASEAN Business summit was held in 2011, and April 2012 witnessed a revival of EU-ASEAN relations, with an action plan sealing deeper relations of cooperation between the two organizations (ASEAN-EU 2012). In addition, the EU was the first regional organization to accede, in the same year, the ASEAN Treaty of Amity and Cooperation, which opened the possibility for the EU to being included in the East Asia Summit (EAS; Youngs 2014: 75).

ASEAN itself, far from collapsing as a consequence of the 1997-1998 Asian crisis, succeeded in starting a common anti-crisis program and in relaunching cooperation with Japan and China (Koldunova 2012). Moreover, ASEAN is deepening its own way to regional cooperation while relaunching itself as the pivot of 'a concentric circles regional architecture in the making' (Telò 2016: 27), with the consolidation of ASEAN + Three (including China, South Korea, and Japan), the EAS and the ARF.



In a context of growing global competition, the EU has increasingly injected pragmatism into its foreign policy and into EU-ASEAN bi-regional relations. Firstly, the EU looks to be moving forward beyond old asymmetrical patterns, seeking cooperation with ASEAN on an equal basis and showing more respect for its distinctive norms and approach to regionalism (Koh and Yeo 2020). In the most recent official documents EU and ASEAN are described as ‘natural partners’, which share the same goals of promoting peace, stability and prosperity for their citizens (EEAS 2013), all the while maintaining ‘integration processes [that] each follow their own logic’ (European Parliament 2017: 6). ASEAN is now recognized by the EU as one of the most ambitious regional organizations; therefore, both organizations have ‘a lot to share and learn from each others’ experiences and approaches’ (EEAS 2017). As stated by the European Global Strategy, ‘[w]e will not strive to export our model, but rather seek reciprocal inspiration from different regional experiences’ (EEAS 2016: 32).

Secondly, the EU intends to expand ASEAN-EU cooperation as the basis of a strategic partnership, moving beyond traditional areas of cooperation such as economy and trade to other spheres, notably security and development-aid issues. In addition, the EU now hopes to forge closer ties with ASEAN in non-traditional security cooperation in order to establish its role as a security and political actor in Asia. In general terms, given its awareness of ASEAN’s status as a significant player in the Asia Pacific, the EU regards its relationship with ASEAN as critical to broadening its Asia policy beyond China (Xuechen 2018: 236).

The impact of these trends on EU-ASEAN normative relations and the EU’s approach towards regionalism promotion in Southeast Asia has been quite important. In general terms, the multiple crises (financial crisis, refugee crisis, Brexit) which have hit the EU in recent times have weakened the credibility and attractiveness of the European model of regional integration based on liberal values. As a consequence, the EU’s ability in ideational diffusion has been also affected. As far as ASEAN is concerned, these crises have reinforced its self-perception as a distinctive model of regional integration that intentionally differs from the European experience (Beeson and Stone 2013; Fitriani 2014), that can offer a model to Africa and other regions of the world (Mahbubani and Tang 2018: 110) and should induce the EU itself to learn from the ASEAN Way and ASEAN’s flexibility (Mahbubani and Sng 2017: 116-121).

Moreover, pragmatic considerations induce the EU to pursue two apparently contradictory policies. On the one hand, it supports both further consolidation of ASEAN



and ‘an ASEAN-led regional security architecture’ (EEAS 2016: 38), as ‘a united and self-confident ASEAN is a key to ensure that regional challenges are addressed in a rule-based manner’ (European Commission 2015). On the other hand, it tempers the goal of regionalism promotion in its foreign policy by fostering bilateral relationships (Smith 2014: 67). Not by chance, the EGS clearly states that ‘the EU will support regional organizations [...] where possible and when in line with our interests’ (EEAS 2016: 32). The attempt to sign a EU-ASEAN Free Trade Area (FTA), launched in 2007, was dropped by the EU as it grew frustrated with ASEAN’s inability to make progress in common positions on trade, and with the reluctance of poorer ASEAN countries to accept EU pressures on liberalization concerning the so-called ‘Singapore issues’^{xi}. As an alternative, the EU pushed the partner countries to sign a raft of new bilateral trade deals, overturning its own policy that favours bloc-to-bloc relations. This came ‘as a belated response to the battery of trade accords offered by the United States and China across Asia in the early 2000s – a time when the EU was still keen to prioritize the multilateral Doha Round’ (Youngs 2014: 75). As a result, bilateral trade agreements with Singapore and Vietnam were signed in 2018 and 2019 respectively. This pragmatic turn in trade was clearly called for by the ‘Global Europe’ Trade Strategy of the European Commission, which explicitly linked the creation of jobs in Europe with the opening up of new markets abroad (European Commission 2006). For their part, ASEAN states hope that bilateral deals with the EU will serve as a counterweight to their increasing trade dependence on China. While the EU’s official position presents bilateral FTAs between the EU and ASEAN countries as building blocks towards a future EU-ASEAN agreement, bilateralism can also maliciously be interpreted as an instrument for the EU to increase asymmetries with partners (following a *divide and rule* logic) and cause its trade preferences to prevail; furthermore, nothing can guarantee that bilateral trade deals will lead to a bi-regional agreement and not exert centrifugal pressures on the bloc-to-bloc process, undermining it (Finizio 2015b: 149).

The increasing importance of Southeast Asia in world affairs and the gradual rebalancing of power asymmetries between the EU and ASEAN have also affected the effectiveness of the former in pursuing the affirmation of liberal values in the region. As early as 1990s, for instance, these dynamics had fueled the traditional cleavage within the EU between countries which are more pragmatic, dialoguing and inclined to reconcile ideals and national interests, and countries which are more intransigent and in favour of intervening to respect democracy



and human rights (Smith 2006: 162). Whereas countries such as France and Germany did not feel comfortable holding their relations with ASEAN hostage because of Myanmar, UK, Denmark, Sweden and the Netherlands were inflexible in relation to respect for those principles (Youngs 2001: 139). European concerns, especially from France, Germany, and Italy, that economic relations were being affected by issues related to human rights and democratization led to the creation of the Asia-Europe Meeting (ASEM) in 1996, an interregional forum in which the question of Myanmar was depoliticized, dialogue on human rights was avoided and from which the European Parliament (EP), one of the most critical voices of Myanmar, was excluded (Youngs 2001: 123; Gaens 2018)^{xii}. In other words, ASEM can be considered a tool to enable the EU and its member states to bypass their own principles and democratic conditionality, which were making interregional relations with ASEAN extremely difficult.

The new approach towards ASEAN reveals that the balance between interests and values is in flux, as human rights, democracy, and the rule of law are not so central in bi-regional relations as they were in the past. Since 2012 the EU has significantly toned down its norm-exporter rhetoric and developed a reflective vision in terms of its relations with ASEAN. Rather than stressing universality of European norms and standards, the EU now places less emphasis on norm promotion practices (Xuechen 2018: 234). For instance, it has opened trade talks with ASEAN countries without requiring democratic reforms. In the case of Cambodia, among others, the Commission's trade directorate blocked a member state proposal to remove trade preferences on human rights grounds (Youngs 2014: 119). In order not to hamper bi-regional cooperation, the values debate is addressed in a nonconfrontational way through a specific EU-ASEAN Human Rights Policy Dialogue, launched in October 2015. However, all sides agree that these instruments are rather formalistic and devoid of tangible results.

The EGS explicitly recognizes the ongoing rebalancing between interests and values launching the vague, oxymoronic and widely debated concept of 'principled pragmatism' as a guideline for EU's external action, stemming as much 'from a realistic assessment of the strategic environment as from an idealistic aspiration to advance a better world' (EEAS 2016, 16; Tocci 2016; Biscop 2016).



6. Conclusions

The objective of this chapter has been to analyze the evolution of the normative dimension of EU-ASEAN relations, assessing whether the EU has been able to use interregionalism to change the normative identity of the partner organization and its member states, and to influence the path of regional integration in Southeast Asia.

The EU-ASEAN relations are characterized by a greater normative gap and a less asymmetrical relationship, which has induced ASEAN to resist pressures from the EU and even develop its own normative identity in response to them. The analysis of the normative interaction caused by the violation of democratic principles by Myanmar has highlighted how the EU has failed to use interregionalism ‘to democratize’ ASEAN’s and Myanmar’s normative identities, allowing interregional relations to be undermined, instead, by a normative confrontation which has not been resolved. This evolution has deeply challenged the EU’s external identity as a normative and transformative power, which, in the 1990s, was itself seen as ‘an embryonic microcosm of the way that [the] emerging international system would ultimately function’ (Youngs 2010: 4), as an actor which could (and was expected to) transform the world along regionalist and liberal lines. Furthermore, it has challenged the EU’s Eurocentric and, to some extent, arrogant vision of world order which increasingly appeared blind to the winds of change brought by the multipolarization of the international system, in general, and the rise of Asia, in particular.

The year 2012 marked a turning point in EU-ASEAN relations, mainly as a consequence of the impact of the Eurozone crisis on the EU and the European economies, of the continuous rise of Asia, and of the Obama Administration ‘Pivot to Asia’ Policy. While the 1997-1998 Asian financial crisis had shown to Europe and to the world the resilience of ASEAN, which was relaunched as a multidimensional institution and the hub of a wider regional architecture in the Asia Pacific, the financial crisis which hit Europe since 2009 accelerated and made the relative decline of Europe more evident to policy-makers. These factors, together with Asia’s increasing strategic relevance for Europe and the major powers (especially United States and China), have brought the EU to inject increasing pragmatism in its foreign policy and in its relations with the region. On the one hand, a kind of ‘marginalization anxiety’ suffered by the EU has brought it to redefine its interests and strategy in South-East Asia, trying to upgrade its relations with ASEAN to a strategic



partnership, and expanding them beyond the spheres of trade and economy, thus including defense, security, development-aid, too. As a consequence, it appears that the EU has gradually accepted the much-lauded ASEAN Way. On the other hand, these factors are fueling a rebalance between values and interests, between idealism and realism in the EU foreign policy, which is affecting the normative dimension of EU-ASEAN relations. The relative loss of importance of principles such as democracy and human rights and the relative turn from interregionalism to bilateralism in EU-ASEAN relations indicate that the EU's external identity, which has been built on the very centrality of these principles and of regionalism promotion, is changing. The direction and final destination of these trends are far from being clear, however, at least to ASEAN countries. In fact, ASEAN still considers the EU as an economic partner, rather than a strategic and political one, does not recognize yet the EU as reliable security provider and tends to privilege relations with big powers which are more effective in the region, such as Japan, US, and China (Xuechen 2018: 238).

This uncertainty about the dynamics of the EU's identity is largely due to the difficulty for a non-traditional actor, still lacking traditional foreign policy tools and resources such as the military power, to move beyond the 'normative power' approach towards an area of the planet which is strategic for very traditional actors, such as China and the US. On the other hand, it is also due to the turbulences and uncertainties still characterizing the European integration process.

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ⁱ 'The EU and its Member States act in support of democracy drawing on strong parliamentary traditions, based on the role of national Parliaments and regional and local assemblies in Member States and that of the European Parliament' (Council of the European Union 2009).

ⁱⁱ The promotion of regionalism is the EU's inclination to classify neighbouring countries together under regional strategies and policies, and to encourage regional groupings to establish common institutions, develop common identities and establish themselves as actors in international relations (European Commission 1995: 3; Smith 2014: 67; Finizio 2015b: 133).

ⁱⁱⁱ Romano Prodi, at the time President of the European Commission, stated in 2000: 'Europe needs to project its model of society into the wider world. [...] We have a unique historic experience to offer. The experience of liberating people from poverty, war, oppression, intolerance. We have forged a model of development and continental integration based on the principles of democracy, freedom, solidarity – and it is a model that works. A model of consensual pooling of sovereignty in which every one of us accepts to belong to a minority' (Prodi 2000: 3).

^{iv} In particular, according to Manners, these norms include five 'core norms' (peace, liberty, democracy, rule of law, human rights), as well as four 'minor norms' (social solidarity, anti-discrimination, sustainable development and good governance).

^v In that year, a Conference at Ministerial level between the European Communities and their Member States on the one hand, and ASEAN on the other was organized in Brussels (20-21 November), and a Joint Declaration in favour of political dialogue and economic cooperation was adopted (ASEAN-EC 1978).



^{vi} UNESCO Courier 40, March 1994.

^{vii} At the Bangkok Conference, China, Singapore, Malaysia and Indonesia spoke of a distinctive cultural legacy and values, and the communal (state) obligations of its citizens while emphasizing that the interpretation, implementation, and monitoring of rights is within the purview of the state. See in particular the statements by Wong Kan Seng, Minister of Foreign Affairs of Singapore, and the statement by Ali Alatas, Minister of Foreign Affairs and Head of the Delegation of Indonesia, both reproduced in Tang (1995: 242, 228).

^{viii} The mapping of these lines of action was provided by European Council (1995).

^{ix} The ARF was created in 1994 with a mandate to discuss political and security issues, and is presently the principal forum for security dialogue in Asia (Tavares 2010: 90). It currently comprises 27 countries/actors, including the US, the EU and Russia.

^x An exception is Grant (2012).

^{xi} Four issues introduced to the WTO agenda at the December 1996 Ministerial Conference in Singapore: Trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation.

^{xii} Not surprisingly, intense debates on ASEM and human rights took place within the European Parliament, fueled in particular by the accession of Myanmar to ASEAN, in 1997. Many Members of the EP, and the Assembly as a whole, urged the Council to exclude the country from ASEM. Moreover, they tried to induce it to request that human rights issues be included in the agenda of the Second ASEM Summit (ASEM II), planned for 3-4 April 1998 in London. See, for instance, the debate on ASEM process which took place on 11 March 1998: Official Journal of the European Communities, *Debates of the European Parliament*, 4-516, pp. 150 ff. Georg Jarzenbowski (PPE), among others: 'I share the view of my fellow Members that if it is to address economics, trade, finance and foreign policy, the ASEM Summit will also have to discuss the underlying problems which are common both to ourselves in Europe and to our Asian partners, that is, issues such as the fight against poverty, the observation of human rights, the development of democracy and the rule of law and the environment'.

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