

White Paper on Governance  
Working Group N° 5  
An EU Contribution to Better Governance beyond Our Borders

**REPORT OF WORKING GROUP  
“STRENGTHENING EUROPE’S  
CONTRIBUTION TO WORLD  
GOVERNANCE”**

(Group 5)

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## FOREWORD

This is one of a dozen reports of working groups established to contribute to European Commission proposals, and to European debate, on governance.

The Working Group has been composed of serving Commission officials working on a personal basis rather than representing the part of the Commission structure within which they are currently posted. As such, the work of the group has been a constant balancing act for each of us: balance between the day job and the work of the group, balance between our personal instincts based on our individual experiences on the one hand, and our sense of what the institutional market will bear in terms of radicalism, on the other. This innovative formula was successful at least in stimulating energetic discussion and creative writing. I have enjoyed piloting that debate and thank all my colleagues for their efforts. Many of the examples in the paper are drawn from the spheres of trade, environment and the information society; this reflects the areas in which the Working Group had most experience.

The Group had the benefit of input from selected academics and other experts, and has shamelessly plagiarised both the work of those individuals (who are listed at the end of the paper) and others whose gems we have stumbled across in the course of our labours. Thanks are due to these eminent helpers, but any blame for the final product rests with the group alone.

However much, or however little of the work of this group finds its way into the pages of the White Paper and of subsequent EU policy-making, my hope is that one central message emerging from this group will stick, and it is this. If we are to sustain European peace, prosperity and well being, we must pursue those objectives not just at home but world-wide. To make the well-being of third countries a central EU objective can only help us both to avoid introversion and to measure the full potential benefits of our actions. That is why the global aspects of governance, as of our other policy challenges, must be at the centre of EU thinking. No man is an island.

Robert Madelin

## EXECUTIVE SUMMARY

The EU has a clear interest in promoting global governance as a means of achieving the core of objectives of sustainable development, security, peace and equity, objectives no territorial actor can secure alone. Positive transnational cooperation is possible and the EU should show a willingness to experiment in order to improve it. The external aspects must be key in any EU deliberations on governance.

This report is based on the conviction that society, as opposed to only individuals, markets and state, does exist; and that a society does exist within the European Union within which governance can be discussed and improved. Democracy is essential to governance but governance is sometimes criticised as introducing non-public and more selfish elements into the public sphere of government. The danger of privatising and eroding democracy clearly exists but including business and civil society in governance can reduce some of the imperfections of government.

The report identifies two sets of reasons for the pursuit of better governance beyond EU borders: growing interdependence driven by economic globalisation; and the rise of threatening, transnational challenges such as climate change and poverty which require greater effort and shared responsibility at global level.

The existing system of governance, although it has achieved much, still has many shortcomings which contribute to conflict, poverty, unsustainable development. Current institutions of governance are increasingly criticised as being unaccountable, lacking transparency and legitimacy and being incapable of responding to today's challenges. There is considerable scope for improving these institutions and complementing them with new tools. The EU has much to contribute to this task but it must also improve its own ability to provide input if it is to realise its full potential. Like the institutions of global governance, the EU must improve transparency and openness to voices from outside and strive to speak with a single, coherent voice.

This report analyses governance beyond the EU's borders with an emphasis primarily on First Pillar themes: its conclusions are, therefore, a first set of ideas which could usefully be tested in fields covered by other parts of the Treaty. We submit the following recommendations:

1. In line with its global responsibility, the EU should devote greater attention to the impact of EU policies on third country partners as well as on ourselves, using both economic and non-economic definitions of well-being; and to promoting a positive view of the scope for co-operation with our partners at global and regional levels.
2. High priority must be given to the development and use of analytical tools that help EU citizens and policy-makers to understand the impacts of policy innovation, ex ante, as well as ex post. No policy should be defined without using such tools for assessing its overall impact on EU interests and also, where relevant, on global interests. This implies a significant allocation of resources to the development of these tools.
3. Broader participation in EU deliberations on global policy can help to provide a sounder basis for decision-making. We favour the inclusion in our deliberative processes (though not decision-making) of third country players, governmental or not, with an interest in EU decisions. Such consultative inputs are crucial to the quality and legitimacy of EU policy.

4. It is desirable and in the EU's interest for international policy-making to favour steady progress, a willingness to tolerate those who can only move more slowly and a commitment to ensuring that common policies are written at the appropriate global and regional level, and that all players are given the capacity, know-how and resources to apply them.
5. The EU should use the growing range of proven approaches to global problems (benchmarking, peer review, non-hierarchical governance, soft law and, where appropriate, co- and self-regulation) to build on the successful elements of hard international public law. It should not follow the favourite recipes of the past without close assessment of possible lower cost alternatives or complements.
6. The EU needs to ensure that its internal institutional operability and decision-making processes are more responsive to those elements of its citizens' objectives which are supportive of global governance.
7. The EU should explain to its citizens the added value of it taking an active role in global governance.
8. Given its weight, responsibility and interest, the EU needs to strengthen significantly its international representation and ensure that it speaks with a single voice in international and regional fora.
9. The EU should continue to nurture greater coherence and integration between all policy areas, including by reviewing structures, in order to strengthen its contribution to global governance: the sustainable development strategy is a key opportunity to do this.
10. Drawing on ideas emerging from Member States and civil society, the EU should launch a comprehensive internal discussion on the necessary reform of multilateral institutions in the medium to long term. The aim should be to boost the effectiveness and powers of enforcement of such bodies by identifying resources and structural change taking into account the specific nature of problems confronted by each organisation and scope for action at global/regional level.
11. In the short term, the EU should strive to promote greater coherence between existing international organisations. The EU should also continue to champion greater openness and transparency in international organisations. The aim should be that all members can play a full role, institutions are open to contributions from outside players, and institutions have greater legitimacy in the eyes of those affected.

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## INTRODUCTION

### **What we mean by “Governance Beyond Our Borders”**

Governance is variously understood, each analysis reflecting the bias of each observer. For observers working, as we do, within an institution of government, there is a danger that “governance” be defined in too narrow and institutional a manner, as a series of additions to “government” structures designed to make those structures more attractive in a sceptical world.

To correct such an instinct, it is important to bear in mind the vaguer but also more radical concepts of governance that exist: a broader working definition of governance could be the establishment and operation of “institutions” (in the sense not of organisations but of rules of the game) which define actors and their responsibilities, both in co-operation towards society’s objectives and in the resolution of any conflicts that may arise. Institutions can thus be substantive policies, public processes, and even spontaneous behaviour. Good governance is a set of such institutions, which is effective, accountable and legitimate. It is worth emphasising that in the course of our work we needed to clarify some characteristics of governance.

First, to talk of governance is only worthwhile among people with a strong sense of social responsibility. Governance supposes a society. Not all political theorists (from Hobbes to Thatcher) have accepted that society, as opposed to individuals, markets and state, exist. This report is posited on the conviction that societies do exist; that a society does exist within the European Union, within which governance can be discussed and improved.

Second, we have to feel able to talk in terms of societies at global or regional level beyond EU borders, societies in which the EU has a stake and whose shared governance we can help to improve. We began with a mandate to look at “global governance” as encompassing worldwide issues and structures, as opposed to EU-level issues and structures. But very early on we had to abandon the “global” label for our work. We did so to make explicit three perceptions:

- EU (or other domestic) unilateral contributions can sometimes be the best available answer to global governance problems;
- failings of national and regional governance are often an obstacle to solving global problems;
- failings of national and regional governance can in part be caused by global problems.

Seen in this light, the challenges of improving governance “beyond our borders” cover:

- Better EU governance on decisions which have an impact outside our borders;
- Attention to governance in other regions where EU action could make a difference;
- Action on governance at global level.

Third, democracy is essential to governance. The concept of governance is sometimes criticised as introducing non-public (and more selfish) elements into the public sphere of government. The danger of privatising and therefore eroding democracy clearly exists. The more complex the democracy within which governance is being constructed, the more difficult it is to define and deal with this democratic risk.

We note this danger but see a need to address it within our work rather than abandon innovative approaches to governance on the grounds that they carry risks: after all, the status quo is imperfect, too. By including business and civil society in forms of governance some of the imperfections of government can be reduced.

Finally, governance is a means to an end; society will only aim to get it right if there is a strong sense of direction and a commitment to goals which can only be achieved with better governance.

In the early days of European integration, the desire to survive was, almost on its own, enough to drive the search for structures which would prevent a return to war. But once survival is secure, man has higher aspirations and EU governance has been visionary from the start. The Founding Fathers pursued peace but also prosperity and equity. The search for better worldwide governance systems seems to rest on a similar set of common challenges confronting us today. While there are many high-sounding declarations of intent, they boil down to a widely shared core of objectives: sustainable development, security, peace and equity.

If these are the objectives, we identify two sets of reasons for the pursuit of better governance beyond EU borders. First, growing interdependence driven by economic globalisation; second, the rise of threatening, transnational “Others”, be they climate change, poverty, disease or terrorism. In the face of these twin challenges, not even major players such as the EU can meet their needs unilaterally. This ought to make the creation of transnational ‘communities of interest’ much easier than in the past. But centrifugal forces are also at work. The persistence of global threats can lead to despair. In addition, growing interdependence can, both in fact and in popular perception, make all players, even the largest, more vulnerable to shocks engendered elsewhere, so that control of one’s destiny is diminished. Thus the psychological barriers to international trust and co-operation grow just as fast as the need to dismantle them.

In contemporary policy-making, these conflicting considerations result in two cases for action:

- “The dangers are great. We cannot go it alone even though existing institutions are not delivering”. That is the case at best for global governance out of fear.
- “Co-operation can deliver significant public goods to all citizens. International institutions can, with a little effort, be made more effective. There is growing recognition that global challenges require greater effort and shared responsibility at global level”.

That is the positive case for action towards better global governance. But is it credible?

## **PART ONE: WHY GOVERNANCE**

### **1. Foundations and failings of regional and global governance**

Many accept that, within the EU, governance can be seen as a positive co-operative game in a rules-based setting. Indeed, the values-based foundation for EU integration is consistently identified, in Europe, as a distinctive feature. But even those able to look beyond nation to the EU may still be inclined to see governance at a wider (regional or global level) as the working out between territorial players of *a priori* mutually inconsistent objectives in a largely anarchic power-play. Clausewitz is dead but diplomacy and global economic competition are still at least implicitly treated by many as less bloody means of pursuing goals that in the past led to war.

At the global level, a very high proportion of discourse reflects an assumption that the interests of each territorial actor are a self-centred given and that international relations is the advancement of these fixed and selfish interests, with others' interests being pursued only as and when this can be key to maximising our own well-being. Arguably, even the most optimistic statements of inter-state co-operation after World War II went no further than asserting that the interests of each state (or territorial player), properly understood, required a high degree of rules-based co-operation with established provisions for the fair treatment of all and a peaceful settlement of disputes.

This sort of statement, if repeated often enough, can insert into a state's identity, or idea of its interests, the notion of a sustained state commitment to upholding the international rule of law. Just as often, such statements have betokened an identification of state and international community interests only so long as this meant a low level of domestic political pain. The world order thus defined after 1945 made some considerable achievements in the last half century, despite the constraints of the Cold War. Yet the 1990s shed more light on the shortcomings of this order than on its achievements, highlighted by a range of symptoms.

The most basic is general incoherence in policy-making. One explanation for this is the imbalance between governance systems, reflecting in part the ad hoc way in which they were created e.g. much stronger systems for economic (WTO, IMF) than for social (ILO) or environmental (UNEP) issues. This is exacerbated by a lack of analytical tools for producing a more holistic view of the world: incoherent policies result which often work against each other. The result is something of a crisis of legitimacy, reflected not just in protests against WTO, IMF or other meetings but in the apparent loss of confidence in the established system even among some insiders. Without legitimacy, scope for institutions either to heal themselves or to benefit from positive trends of change in society at large, is much diminished. All too often, for example, civil society takes an interest in global problems within the purview of established institutions but does not engage with the discredited existing governance systems, so the growth of new networks takes place in isolation from the old and no new synergy is created.

In the face of this crisis, we found no good evidence to believe that the international institutions and networks currently in place will be able to deliver in the face of new challenges (although the results so far should not be overlooked). They are widely criticised as self-referential, with rather weak forms of accountability, and instinctively inclined to work for "paradigm maintenance". Even where democratic feedback exists in these institutions, policies seem not to be open to sufficiently decisive change in the light of either criticism or evolving external conditions. Nor do the established institutions yet incorporate the sorts of qualities and approaches that scientific and other international communities are finding necessary to deal with the complexities of the current world: within the big international bureaucracies, we do not, for example, see any very great willingness to acknowledge that outsiders may have elements of truth; we are all still bad at multidisciplinary networking; we are not good at cross-cutting analysis of policy impacts; we are not good at coherent intra-institutional co-operation - but we are getting better.

The consequences of these weaknesses are serious and manifold. While some or even many problems worldwide result from failures of local governance, even local solutions are harder to deliver without effective global and regional support. So failures of global and regional governance exacerbate even local problems, while better global and regional governance could significantly enhance the prospects for successful local action. Resolving conflict and improving governance is the most basic precondition for sustainable development, economic, social and environmental.

It is clear sustainable development demands an institutional and political environment respectful of human rights, democratic principles and the rule of law. Today, civil conflicts impose huge costs on whole regions. Driven by poverty and under-development, they perpetuate poverty, creating a vicious circle that can only be undone through special development efforts, including peace-building and political reforms. Such costs are most visible in poorer countries but the continued identification by developed countries of perceived security threats and responses to them also undermine sustainable development, not least by diverting resources.

Good governance thus has a vital role in creating a climate conducive to economic and social development and its responsibility for the equitable division of resources. Only good governance allows for a transparent and accountable management of all a country's resources, such as human resources (knowledge, know-how and skills), natural resources and internal and external economic and financial resources, including development aid.

The absence of good governance in many of our partner countries in the developing world therefore has damaging effects on our development efforts. Many countries are characterised by political instability and weak government institutions incapable of implementing development policies or tackling rising crime, systematic violence and the spread of intra-state armed conflict, with humanitarian, social, economic and environmental consequences.

## **2. The price of bad governance**

The lack of a legal and regulatory framework discourages private enterprise and investment. Transparency and accountability are key factors in establishing trust between the agents of development. Their absence deters investors by creating high transaction costs and offering neither guarantees as to the safety of investment nor the possibility of supervising them. The participation of civil society is vital to general development with a view to formulation, implementation and ownership of development efforts. Bad governance thus jeopardises social development efforts, which demand policy continuity and long-term vision. Of all the factors that determine investment decisions, the evaluation of risk, such as political instability and unpredictable economic and trade policies, is the most crucial.

Corruption and decisions based not on public but on vested interests lead to a decline in the quality of the performance of contracts and often render projects completely unsuited to development objectives. Additional costs resulting from these governance failures can be as much as 10-20% of the price of a contract and lead to a commensurate increase in debt and reduce the effectiveness of co-operation. The costs of corruption are ultimately borne by the public through higher prices or fewer public services.

Finally, poor governance reduces the impact of growth on poverty: access to basic social services is not broad enough and, in some countries, access to productive resources, like education, training, land, capital and credit, need to be greatly improved, especially for women.

Failures of global governance in fisheries, for example, endanger long-term conservation and sustainable use of straddling and highly migratory fish stocks, especially on the high seas. If regional fisheries agreements (RFAs), which often include provisions for extra-judicial dispute settlement mechanisms, and international conventions are not set up or fail, over-fishing, illegal, unregulated and unreported fishing through growth in stateless and flag-of-convenience vessels, adverse impact on biodiversity and conflicts on the high seas threatening international peace and security, will be, and in some areas already are, the result.

Climate change clearly calls for a global solution. Isolated action will entail costs for both environmental effectiveness and economic efficiency. The strong environmental, economic and social interest involved may cause political and economic conflict in the future if global rules are not set in a clear and very specific manner. Multilateral action in the context of the shared but differentiated responsibility is, therefore, vital.

These consequences of poor governance have their own dynamic. If governance systems do not become more effective, these problems will continue to grow. In response, criticism of, and alienation from, established institutions and structures will further increase. So there is urgency behind the global and regional, as well as the EU's own, agenda for action on governance.

It is against that background that we are charged with revisiting the global system of governance, with a view to doing better. In so doing, it seems clear that, despite their shortcomings, existing institutions do have value and will continue to provide the framework for such efforts: reformers should take care not to throw the baby out with the bath water.

### **3. What is the positive agenda?**

A positive agenda for global governance exists. It rests on just three points:

- There are objectives no territorial actor can secure alone;
- Positive transnational co-operation is possible;
- A willingness to experiment in order to improve the ways of transnational operators to date.

The rest of this report is devoted to defining what the EU can do to help to pursue this agenda. We first report (Chapter 2) on the scope for developing principles and tools to innovate in the area of global governance. We draw on experiences in isolated cases which we feel deserve to be more widely known and more often replicated. We do so because, while it would be wrong for the EU alone to seek to declare the way forward, we think it is appropriate to highlight some potentially winning ideas. But there is room for improvement on the home front too.

We have been struck by the introversion of much EU policy debate in these early months of the new millennium. The Founding Fathers did better in drafting the Treaty of Rome, defining the common commercial policy, for example, not as a policy for Europe, but as a building block in the harmonious development of an open world economy. In economics and other fields, their successors, in Brussels but also throughout the EU, have often lacked their vision.

True, when the single market process was questioned in the 1980s, the Commission delved into the EU's basic philosophies and developed a doctrine to stress that, far from being a Fortress, the EU was completing its market integration with a view to becoming a true "World Partner". But this vision has faded or at times become confused, e.g. the lack of consistency in our arrangements for the inclusion of third-country stakeholders in our domestic policy-making.

#### **Recommendation One:**

**In line with its global responsibility, the EU should devote greater attention to the impact of EU policies on third country partners as well as on ourselves, using both economic and non-economic definitions of well-being; and to promoting a positive view of the scope for co-operation with our partners at global and regional levels.**

Our second objective (Chapter 3) was to report on how far the EU can improve its own governance. A key element is openness, given that open decision-making, particularly by larger actors, is not only instrumental in global governance but intrinsic to it: global governance does not happen only or mainly at global level, but encompasses all institutions and decision-making within each actors' territory, to the extent that developments there have an impact on others.

If, but only if, the EU can set a consistent standard for such open deliberations as a prelude to decision-making can we appear less of a threat to our partners. We will then be better placed to persuade them of the value of the EU experience for the development of global governance. This is important, as the EU can be proud of what it has achieved e.g. the Single Market and EMU, and what it stands for: political acceptance of economic integration as a key instrument for the pursuit of other ends; the development of democratic mechanisms for balancing economics, social justice and sustainability; public investment, e.g. the Structural and Cohesion Funds, to build up human, technological and infrastructure capacity in poorer regions. Above all, the EU stands for deep rather than shallow integration: we, more than most, have realised from the first that market-opening is not enough.

Building on its own experience and (we hope, enhanced) credibility, the EU can then play a full part in improving the workings of current institutions, and developing new regional and global systems. In doing so, the EU would bring its ideas to the debate without presuming there is a single model for governance in all areas and approaches. In our third and final substantive chapter (Chapter 4), we report on ideas for improving the structures and internal processes of existing institutions (in a broad sense), improving the coherence of and co-operation between existing organisations and maybe creating new institutions, both in the form or organisation or otherwise. It should be noted that some of the suggestions made in chapters 3 and 4 imply possible Treaty changes. This report does not dwell, however, on the details of such implications but concentrates on defining the objective itself.

## **PART TWO: FORGOTTEN TOOLS: APPLYING INNOVATIVE SUCCESSSES MORE WIDELY**

“Governance” is sometimes touted as the opposite of a caricature “government” past; a past based on institutionalisation, harmonisation and centralisation. Thus defined, governance is a solvent applied to the establishment by enemies of “big governments” and, in the EU, for eurosceptics it is seen as an antidote to a supposed surfeit of Brussels. Global governance can also be seen as a counterweight to globalisation.

Such simplifications hold little water but the complexities of a multi-polar, wired world allow the EU and its partners elsewhere to be more sceptical about centralisation, more open to a broad definition of institutionalisation, i.e. creating rules rather than organisations, and readier to limit harmonisation to those, often rather few, issues where it is needed.

It is striking how much recent experience reflects this broader menu of approaches to governance yet in most cases innovative approaches have been developed ad hoc (sometimes with deliberately little publicity) and then lost to sight. It is worth trying to systematise the experiments we see going on, since we would recommend that they be applied more widely as part of an expanded tool box for governance. This paper considers some of the most striking examples, others being briefly summarised in Annex I.

## **1. Integration and Coherence**

As noted in chapter 1, the key failure of governance today is the incoherence of policies across issues. This reflects both a lack of analytical tools allowing the integration of diverse issues in a single view of problems and a continued resistance to broad participation in the deliberative if not the decision-making phase of policy-making, despite growing recognition that participation is indispensable to ensure integration and to bolster legitimacy. Such shortcomings result from a tendency to base policy on narrowly focussed expert analysis at the cost of attention to cross-cutting concerns.

This tendency is often associated and contrasted with a perceived Asian preference for more holistic approaches. Such a distinction fails to acknowledge that part of Western traditions which, from Aristotle to the Austrian school of economics, Koslowski and MacMurray, analyses economics, ethics and politics as forming a single set of issues. It is, however, fair to say that this tendency has been subordinate to a more compartmentalised approach to specific disciplines, particularly in the field of economics. And, while professional economists pay a good deal of attention to non-economic consequences of market failure, this compartmentalised approach has sometimes been abused to justify public policy attention focussing on economic objectives while leaving inadequately analysed the non-economic consequences of policy.

This was not controversial for as long as it was generally assumed that, in the long run, market-opening and liberal solutions to policy challenges left everyone better off, and that the necessary mechanisms existed to avoid negative externalities and to ensure equitable redistributive help for short-term losers from policy change. An increasing number of people now question these assumptions. This growing popular perception, justified by the actions of some policy-makers if not of most economists, that policies fail to reflect broader concerns has much to answer for.

One important consequence is at least part of the emergence of a vocal minority within Western society that expresses its unease with the post Cold War triumph of market economics and global economic integration. Rioters in Seattle did not articulate their worries in these terms, but one of their central demands, and of Western NGOs, is the integration of so-called non-trade or non-economic concerns into market-based policy-making. This demand is so framed that it sounds at times to be obscurantist, self-serving or substance-free political correctness. In fact, it is a call to return to a more integrated world-view that Aristotle would have found familiar, so that such a desire for more coherent policy-making should not be controversial in principle. But coherent policy is not easy: it faces instinctive resistance to new approaches, the lack of analytical tools and the lack of political leadership in changing old ways.

### **1.1 Tools for Integration**

Integration can only take place if appropriate analytical tools are available. In the field of trade policy, this problem is well illustrated by the history of the Sustainability Impact Assessment.

Trade negotiations have from the first been informed by analysis of the impact of trade liberalisation on production and trade. In the early days of the GATT, this was based on a crude assessment of the cuts to be made in ad valorem tariffs and of the volumes of trade to which those tariffs had in the past applied. No assessment was made of the combined impact of tariff cuts across the stages of a single value chain; nor was any attempt made to take account of the variable price elasticity of products for which trade-offs were being made. No account was taken of the effective as opposed to nominal rates of protection.

Unsurprisingly, given such crude beginnings, broader impacts, while often referred to in negotiations and in negotiated texts, have only ever been analysed very crudely, with a view to the production of results which justified politically expedient compromises already identified in the negotiators' minds. The results of the last Round, for example, included commitments to

follow closely, and where necessary intervene to improve, the impacts of agricultural liberalisation on the economies of net food importers or of services liberalisation on the development of emerging markets. Analysis, conducted largely by the WTO's secretariat, has been pretty general and has enjoyed little sustained interest from WTO members as a whole.

Against this unpromising background, debate since 1996 on launching a new Round has sparked demands both from EU civil society and developing country governments for a broader impact assessment of trade liberalisation. The former have wanted better analysis of the environmental impact or the link to sustainable development, the latter of the development impact. It is perhaps indicative of Western compartmentalised thinking that most EU NGOs prefer to analyse the impacts on their specialist field (biodiversity, forests, environment, development) rather than to look at sustainability as a whole. Southern NGOs claim, and a literature survey bears out this claim, to look at linkages more broadly.

In response to this challenge, the Commission can at least take credit for pushing in the last couple of years for a sustainability impact assessment (SIA) of the coming trade agenda. This report cannot properly summarise the methodological complexities of SIA. It is, however, instructive to highlight the principal dilemmas. The theoretical framework for the work is only half-built. Sustainable development itself is the subject of varying definitions.

All seek to set a single over-arching objective e.g. "improving the quality of human life while living within the carrying capacity of supportive ecosystems"; but all definitions tend to highlight the tension between the three components: economic, social and ecological. Any assessment must therefore count apples and pears (gender equality of income; employment; availability of clean water), and count them separately, although SIA might one day be expected to help individual societies to attach values to the apples and pears.

The work is technically complex. The trade agenda is multi-faceted (15-20 broad areas of policy change are identified in the EU approach to the agenda for the next Round); the changes envisaged would affect 135 WTO members; more than one scenario, or set of assumptions, is needed to capture the uncertain future; in each member country, indicators of impact have to capture, for each scenario, the three broad areas of sustainability. Suppose that, as in Commission SIA to date, the indicators number at least 9 and arguably many more than that: an assessment based on three basic scenarios, covering say 5 regional groupings of member countries and covering the full range of, say, 15 policy changes, must make and combine over 2,000 individual assessments in order to come up with basic guidance on the problem posed.

SIA is politically delicate. If the EU seeks sustainable development worldwide, it will wish to understand the impact on sustainability worldwide of changes it is proposing. But while any assessment of our own direct interests is legitimate, some developing countries feel threatened by some aspects of "our" assessing "their" costs and benefits.

Despite these difficulties, SIA is here to stay. The Commission's initial work was probably the first of its kind when launched in the late 1990s but now an SIA network has sprung up around the world, comprising governments, academics and NGOs working on SIA methodological problems in their own fields of expertise. There will never be a single answer on the sustainability of a given policy change, even for a single country, but this makes SIA no more complicated than any long established economic forecasting exercise. SIA, like other snapshots of the world, will be a contribution to policy-making and not a determinant of policy.

Another integration tool is EXTERNE, the joint EU-US project for calculating the environmental and social costs of different forms of energy, particularly related to electricity generation and transport. Under EXTERNE, scientists, engineers and economists in more than 100 institutes have been working since the early 1990s to devise cost/benefit analyses of various technologies and their applications. As such it provides a valuable tool for internalising environmental costs and for formulating policies so that they are supportive of sustainable development.

### **Recommendation Two:**

**High priority must be given to the development and use of analytical tools that help EU citizens and policy-makers to understand the impacts of policy innovation, ex ante, as well as ex post. No policy should be defined without using such tools for assessing its overall impact on EU interests and also, where relevant, on global interests. This implies a significant allocation of resources to the development of these tools.**

### **1.2 Processes for Participation**

The search for a more integrated worldview drives established decision making structures to become more inclusive. Better integration of differing objectives and perspectives is impossible unless a wider range of actors are systematically integrated in the deliberative, if not the decision-making, stage of the policy process. Business, civil society and public authorities will almost always each have a legitimate contribution to make, in the absence of which the effectiveness and, in some cases (e.g. the MAI), the legitimacy of decisions taken will be at risk.

In matters affecting the world economy, it is not only “our own” representatives of these segments of society that must be brought into the picture but also those from beyond the EU. Broader participation is needed not only to “get the answer right”: it is an implicit acknowledgement that there may not be a right answer but that we can only approximate to the best answer if we build a broader knowledge-base from which to start. Broader participation reflects the fact that more and more players wield effective power i.e. can affect the future course of events, in society. One benefit of increased participation can be wider sharing among players of responsibility for the resolution of common problems.

This is easier said than done. The very notion of more broadly shared responsibilities can appear deeply challenging to those whose self-image is that of an institutionalised holder of power, whether private (the CEO) or public (the Permanent Secretary) or, in some instances, simply because of their gender. Nor are new actors any more sure to wield power in a more altruistic and beneficent way than those before them, so, whatever the level of participation, policy-making needs careful, transparent and accountable management to avoid abuse of power and agency capture. Key to sound management of broader participation is to emphasise that participation is but one side of the coin, responsibility being the other, and then to define the responsibilities of participating actors. In doing so, responsibility must not be defined in ways that de facto exclude some actors e.g. NGOs seek deliberative participation but do not claim to be ‘representative’. Any arrangement for third country players will need to reflect their hybrid status: as stakeholders in our deliberative processes insofar as EU decisions affect them and they have a perspective that can contribute to good EU decisions, but as ‘outsiders’ for purposes of decision-making.

New communication technologies, notably e-mail and the World-Wide Web, provide new opportunities to increase transparency and participation. E-mail facilitates wider communications and breaks down the hierarchical and sectoral rigidities in organisations. The World-Wide Web can enable access to information much more freely, cheaply and widely than ever before. The wider use of these technologies can itself do much to make existing international organisations

more transparent and responsive to public concerns, especially in developing countries, and in civil society groups without the financial resources to travel and participate in lengthy meetings.

New electronic communications cannot only increase the efficiency and transparency of existing organisations, they can enable entirely new types of “network governance” structures to become effective. The best example is the networked sharing of responsibility of Internet development and interoperation in which over 1000 companies, and 5000 engineers actively participate. Others are the “Open Method of Coordination” between EU Member States (inter-government level) and, in civil society, collaboration between aid agencies responding to natural disasters.

Surprisingly to institutional insiders, a participatory approach must also accommodate the interests of those who may not wish or be able effectively to take up the right to participate. The broader the range of possible participants in a deliberative (or a fortiori decision-making) process, the more likely there will be a capacity problem: how far should effective participation be guaranteed by public subsidy and technical assistance to those who need it? And how far should those who do participate take responsibility for the interests of those who, either through lack of means or through a desire to opt out of global economic integration, fail to turn up?

For the purposes of global governance, the issue of participation arises at two levels: first, the need for broader participation in EU decision making on both matters beyond our borders and EU business affecting third countries, if the EU is to play a leading legitimate role in global governance. Second, the need for broader participation at the global or regional level itself.

The first issue is dealt with in detail by working groups other than this one. We nonetheless have some ideas in chapter 3. In chapter 4, we briefly present ideas on a range of complex issues where international governance needs to become more open to additional inputs from “outside”, creating rules and processes for the transparent involvement of civil society.

### **Recommendation Three:**

**Broader participation in EU deliberations on global policy can help to provide a sounder basis for decision-making. We favour the inclusion in our deliberative processes (though not decision-making) of third country players, governmental or not, with an interest in EU decisions. Such consultative inputs are crucial to the quality and legitimacy of EU policy.**

## **2. Promoting and managing diversity**

Diversity is inevitable. No two countries can have the same answer to the pursuit of sustainable development in their different national situations. Nor can an increasingly broad range of participants in decision-making be expected to achieve uniform views on any issues, however much some have hoped for this in the past. Without falling back on moral relativism or complacent inaction, governance seems to us to require a new modesty and more nuance concerning possible action and likely consequences. This implies a world where we not only accept, but also seek to manage better, diversity, thereby achieving greater coherence in the long term than we have managed in the past. This seems to us to be the description of a world where the EU can feel more comfortable than other players and therefore play a strong role.

We need to understand diversity at several levels. In a plural society, objectives will vary. Among objectives, even those which are widely shared, their values will be differently weighted by different players. Among means to achieve given objectives, diverse views of relative feasibility will also prevail. Finally, and implicit in all the above, implementation of decisions needs increasingly to accommodate slow movers as well as fast movers.

A utilitarian dictatorship, where the greatest good of the greatest number can be pursued regardless of the cost to minorities is no longer a respectable model but can at times still be discerned as prevailing: accepting diversity means no longer accepting such modes of behaviour. This raises the question as to whether it is legitimate to coerce speed from the reluctant or the ill equipped.

Core principles apply throughout the EU, while momentum is maintained by greater tolerance of diversity on the non-essential or the local. Progress on EMU or Schengen have been possible by allowing some to start and others to follow. This strategy requires, reflects considerable self-confidence as to the integrity of the process while the only strong objections to these multi-speed strategies have rested on fears that they will over time undermine the EU's fundamentals. Similar confidence can be seen in the move from harmonisation of standards towards a 'New Approach' of mutual recognition of national measures and harmonisation only of the essential.

All of this takes place in a Union which continues to maintain a strong sense of identity and a strong sense of self-definition vis-à-vis the rest of the world. In areas such as cultural policy, for example, the EU has been unanimously and successfully determined to resist outside pressure to accommodate a level of third country presence that would undermine established internal preferential policies, such as the quota on local TV content. It has done so not on the basis of a harmonised culture, but of a determination to defend the right to be different.

The right to be different sometimes requires the EU to make the apparent sacrifice of moving first. Global problems require global debate but remedies will not necessarily be found at global level. Unilateral or regional action, particularly by big players, may be more effective. Even where one or other big player goes it alone (WTO financial services in 1995, climate change in 2001), the rest of the world can still go on, accepting that free riding comes to everybody from time to time.

The right to diversity often becomes also a need for diverse, rather than global action. At times, it is necessary to resist the charms of the global approach: true, global solutions are more visible, more glamorous and for administrations may seem a less costly sphere of operations than is the case for local or regional initiative. Against this, global action may be ineffective and can also be distant, alien and intimidating to the individual citizen. Both the pragmatic acceptance that objectives are achieved at different speeds by different countries, and the principled rejection of attempts by outsiders to define how far the EU can be different from somebody else's expectations, constitute points of shared behaviour between the European experience and that of, for example, Asia.

It is tragic that a combination of post-colonial reflexes on both sides and a lack of deep and sustained dialogue have obscured this common approach from the eyes of most members of the Asia-Europe community, despite the fact that it has been in discussion for close to a decade. Vis-à-vis Asia and other partners around the world, the EU would do well to emphasise these points in common and thus put in better context issues where our identity requires us to differ, or to take positions that seem inconvenient or embarrassing to others, e.g. in the field of human rights.

Be it in non-economic fields such as culture, or in global economic policy-making, there is a need to give high priority to achieving a more consistent shared understanding of which differences of value and practice are acceptable and indeed to be nurtured, and which are undermining the fundamentals of global peace, equity and prosperity and are therefore unacceptable. To give priority to this endeavour is not to assume that consensus can be achieved; on the contrary: progress can only be made if we accept at the outset that our own values and ideas will not necessarily prevail over those of others.

But to devote energy to this issue would give new clarity and new legitimacy to co-operative institutions, and make it clearer that the economy is run not on a value-free basis for bankers and traders (as some allege) but on a value-labour basis, rooted in the individual freedom that can come from the transactions made possible by the market: the benefits accruing from the economy are more than just economic.

#### **Recommendation Four:**

**It is desirable and in the EU's interest for international policy-making to favour steady progress, a willingness to tolerate those who can only move more slowly and a commitment to ensuring that common policies are written at the appropriate global and regional level, and that all players are given the capacity, know-how and resources to apply them.**

It is worth illustrating some of these broad political points with some specific cases.

#### **Case Study: *WTO subsidiarity***

WTO debate and dispute settlement in the last decade have been characterised by a tension between, on the one hand, the long-run commitment of the trade community to orient decision-making systematically in favour of open trade, and on the other hand, an acceptance that WTO rules need to establish a clearer frontier beyond which this commitment will be conditioned by deference to WTO members' autonomy in domestic regulatory activity.

Successive WTO rulings, more by the permanent Appeals body, which has had to qualify and overturn rather simplistic approaches by the WTO's part-time panellists, have tended to draw a line between the right to set regulatory objectives and the manner in which objectives are implemented. For objective-setting (risk from asbestos or hormone-treated beef, preservation of "someone else's" sea-turtles) the WTO has consistently endorsed the sovereignty of its members. For implementation, WTO has, with equal consistency, shown a determination to define and apply high standards of open, international co-operation: explicit *ex ante* study of available data, consultation, an exhaustive diplomatic dialogue with interested third parties.

To Working Group 5 this seems a satisfactory approach but one for which WTO has yet to receive adequate recognition. This lack of recognition both provokes unnecessary regulatory chill by those who exaggerate what WTO means for their regulatory autonomy and permits excessive criticism of WTO's effect on domestic decision-making.

#### **Case Study: *Regional diversity within the EU***

Governance at EU level provides shows how governance beyond borders can be supportive of diversity. One element of the concept of the nation state is that the state comprises a single nation. In the past, political leaders trying to create out of different ethnic or linguistic groups a uniform 'nation' in their political territory. Only a unified, in other words homogeneous, nation, went the belief, could inspire in its citizens a sense of identity and loyalty to the state. Furthermore, ethnic, linguistic or religious minorities were often perceived as a threat, lacking in the majority's sense of identity and loyalty and, accordingly, feared as a potential ally of neighbouring powers or insurgents. In the past, many European countries were not only intolerant of such minorities but actively sought to suppress them through expulsions, religious intolerance, or prohibitions on the use of their languages.

Recent years have seen a resurgence in the EU of regional identities and regional languages, a phenomenon which some observers claim as evidence that the process of European integration is swimming against the tide of reality. In fact, it is integration which has made the resurgence of regionalism possible: the removal of the external threat at the EU's internal borders has meant minorities can be allowed to flourish without posing any threat to the integrity of the state or the 'nation', if they ever really did. Moreover, open borders and fewer differences either side of them in terms of system of government and levels of prosperity mean that in many cases it matters less today which jurisdiction people live in than it used to.

Of course, there have also been measures at EU level to support regional and linguistic diversity and regional policy itself has sought to foster cross-border links and reduce disparities in wealth between various regions. The interesting point, however, is that the process of EU integration, aimed at preventing conflict between states, has, as a side effect, helped reduce tensions and/or provided a boost to diversity within states. Where tensions exist involving ethnic, religious or linguistic minorities, in particular where such tensions straddle borders, regional integration (governance beyond borders) can provide a means of both reducing tensions and supporting diversity. In a world in which regional conflicts and civil wars are rife, the EU's experience is one on which others could usefully draw.

### **Case Study: e-Europe Action Plan**

The Lisbon Strategy and e-Europe Action Plan for the transition to a knowledge economy, with faster growth, more and better jobs, and greater social cohesion must also respect the diversity of Member States. A new "Open Method of Coordination" has therefore been adopted with each Member State taking responsibility for meeting agreed targets and deadlines but in their own ways and with their own resources.

Progress is monitored by independent "benchmarking" through agreed indicators in which all Member States can compare their progress with the best in Europe. This non-hierarchical and networked model of governance is now extended to the candidate countries with even wider diversity in economic development.

### **3. Tools for diversity**

The Westphalian global governance model centres on the nation state with territorial decision-making autonomy and clear interests separate from those of other nation states. Common goals are pursued by intergovernmental discussion and encapsulated in international law. This approach has long been the dominant international governance model but today, in its fourth century in Western European use, is one among many ways of tackling global challenges.

Hard law solutions do not consistently score highest among the available options for effectiveness, not least because of high transaction costs of creating law, and much more of implementing it. With an increasing number of players seeking a role in governance, intergovernmental hard law solutions are no longer intrinsically viewed as legitimate, either.

The clearest illustration is attitudes towards the WTO, the latest and clearest example of hard international public law backed by self-executing dispute settlement. In the last five years, heavy transaction costs of world-wide economic reform through WTO rules have been a focus for complaint both by developing countries who have failed to implement obligations on time and by institutions like the World Bank. Dispute settlement has made innovative and suggestive findings on cases which challenge the linkages between trade liberalisation and the pursuit of non-trade objectives but this has not been enough to avoid a certain vilification of WTO dispute settlement.

Nor have doubts about WTO dispute settlement been expressed solely by anti-globalisation forces. The very drafters of the dispute settlement understanding, and leading political figures responsible for trade policy in today's world have been among those who have expressed doubts about the desirability of such frequent recourse to the WTO courts. Even where, in the recent past, WTO members have won cases, it has proved desirable to avoid WTO judgements e.g. the so-called Helms-Burton dispute between the EU and US; and the swordfish dispute with Chile. In both cases, the defendant, though in a legally weak position, made a politically persuasive appeal to the EU that WTO's legitimacy might suffer if it waded into the difficult waters of alleged national security problems in the case of the US/Cuba embargo or the alleged conservation objectives related to port access restrictions in the case of Chile. These appeals did not deter the EU from initiating WTO dispute procedures but when the defendants also showed openness to out-of-court settlements, it was possible to suspend WTO procedures. This caution does no disservice to WTO and implies no discredit to the existence of its instruments: simply, those instruments, strong as they are, turn out not to be the best ones for all problems.

This empirical evidence tallies with academic commentary where near consensus among political scientists and politicians views new bodies of the traditional "global Westphalian" model as least likely to provide solutions to current global challenges. Even in environment, where the absence of a body as powerful as WTO has been felt for many years, most insiders, certainly in Europe, feel that the establishment of a World Environment Organisation would be no more than a media-driven alternative to urgently needed substantive policy change, so while a WEO remains the ultimate dream of the European environment community, it is not the present priority.

Set against the growth of sceptical (or realistic) assessments of the role of organisations in securing change, the working group has been able, however, to catalogue some other less frequently considered tools, such as benchmarking and peer reviews; non-hierarchical systems; co-regulation; and soft law, whose successful use in recent specific cases marks them out for greater attention in the future and which could in some areas provide useful complements to instruments of hard law. Nevertheless, such tools are not necessarily cost free e.g. legal fees.

### **3.1 Benchmarking and peer review**

Benchmarking is the establishment of empirically generated standards which, without requiring formal endorsement from any interested parties, are accepted as useful points of reference against which to analyse and assess the behaviour of different governments, businesses or other actors. For over a decade the European Round Table of industrialists (ERT) has benchmarked the regime and climate for foreign direct investors in 30 key developing countries. The benchmark definition of investment-friendliness is derived from a survey of ERT member attitudes: the survey has generated a current list of 32 indicators, ranging from ownership restrictions to corruption.

In a series of multi-year surveys, ERT has tracked, again on the basis of business surveys but also on the basis of dialogue with the host governments concerned, the current state and historical evolution of national regimes against those criteria. The resulting patterns of investment-friendliness by country and over time have been presented graphically. The result is a striking illustration of a universal trend whereby developing countries have sought with increasing fervour to adjust the domestic climate to promote FDI.

The strong points of the ERT exercise seem to be the following:

- The legitimacy of the process depends entirely on its being carried out by potential foreign investors: this also makes the process less threatening to host governments than would be a similar survey carried out by OECD countries' governments and creates even an incentive for co-operation on the part of developing country investment promotion authorities.

- Dialogue with host countries enables the analysis to be refined in the light of explanations and additional data, so that the content of the survey is not agreed in draft but seems at least to be accepted as reasonable by the countries subject to assessment.
- The resulting message, that all countries are pursuing greater investment-friendliness, constitutes a powerful incentive for all countries to accelerate this process, to compare their achievements to those of their rivals in the search for FDI and to use this data in domestic decision-making, in order to overcome resistance to change.

And all this without the transaction costs of multilateral rule-making or the intergovernmental friction that can accompany it. Yet benchmarking fails to lock in desirable changes so they risk being reversed in times of hardship. The ratchet effect of international law commitments is the best answer but, for precisely that reason, it is also what many developing countries fear, whether because they wish only to subscribe to commitments that they can maintain even in a difficult future or because, more cynically, they want to keep a domestic margin for manoeuvre. ERT is thus no substitute for a WTO negotiation but it is a powerful foundation.

Peer review, as compared to benchmarking, is an altogether softer exercise. It can cover a broader range of issues in less time but therefore in less detail. There is no need for any very specific empirical work to create special benchmarks. Peer review can only take place within the context of a broad agreement that certain trends are desirable but the absence of specific benchmarks enables a peer review process to extend its coverage to include issues too new or too controversial to be readily benchmarked or effectively subjected to international rules.

The WTO's Trade Policy Review Mechanism (TPRM), in place since the middle years of the Uruguay Round, is a striking example of peer review. It is not designed to judge the subject countries' implementation of new WTO obligations nor to debate a narrow range of issues specifically subject to WTO rules or commitments. On the contrary, its express aim is to create a space for debate in Geneva on the broad range of trade and economic policies maintained by member countries and, against that background, to assess their impact on trade and broader economic or development objectives, both of the country concerned and of its partners.

The inputs for a country review consist of a policy assessment by the WTO Secretariat as well as a policy presentation by the country itself. On the basis of these documents, all other member countries are free to ask questions relating either to the subject matter of the papers tabled or other points.

For example, it is the practice of the United States systematically to pose questions concerning the subject countries' practice in the field of ILO core labour standards: a country can raise ILO issues with another in TPRM, and sometimes to receive an answer, even when the question of linking WTO and ILO secretariats and members in analytical work or policy debate on the trade and labour complex of issues remains a deeply controversial matter. The TPRM is a good thing and has helped to transform the WTO from the rather clubbish and low key creature of the GATT into something more closely resembling the political and trade policy-focussed organisation that the Marrakech agreement seems to envisage.

This is experiment could be taken further e.g. if there is to be participation by non-government players in the deliberative aspects of WTO business, TPRM could be a relatively safe place in which to start to experimenting with NGO, legislator or other civil society participation. Participation could take the form of written questions, observer status or a right to make statements, for example at the close of a TPRM debate. These are issues which lie in the future but already the TPRM, as an exercise in peer review, has earned the applause of those MEPs who

have been able to participate, as part of the Commission delegation, during a hearing on EU trade policy.

### **3.2 Non-hierarchical governance**

Internet governance provides the best example. The EU has world leadership in critical “next generation” Knowledge Economy Technologies (UMTS mobile Internet; Digital TV/Internet; Smart cards) as well as in critical policy areas (data protection and privacy; telework/eWork frameworks etc.) These new technologies and infrastructures provide an opportunity to create a lighter, more inclusive, de-centralised and non-geographic model of governance at world level.

The Internet Governance system has worked and evolved alongside the Internet for 20 years. The development of the **Internet**, which is now the largest inter-operating communications and information system ever built, is managed by a set of Non-Government organisations for which the global ICT business community provides the major financial support and ensures both wide participation and respect for collective agreements. The major bodies are:

**The Internet Society (ISOC):** A non-profit international NGO with over 8600 members in 170 countries, focused on 4 pillars of Standards, Public policy; Education and training; and Widening Membership. ISOC is the “home” of technical groups (IETF, IAB, IESG and the IRTF), and provides support for Training Workshops and centres; and for the Internet Societal Task Force. ISOC is financed by 175 sponsor organisations, mainly ICT companies, and is officially recognised by UNESCO as its NGO partner in the Global Social policy activities.

**The Internet engineering Task Force (IETF)** is the main technology development and standardisation body that ensures inter-operability of the whole Internet system. Its activities are supervised by a Steering Group, and it works within the overall guidance of the Internet Architecture Board. It works over the Internet, and its meetings (every 4 months) are open to all. About 2000 engineers participate in each; about one third new each time.

### **3.3 Soft Law**

Soft law comprises those legal instruments which are not hard law and which include voluntary measures, binding but not enforceable rules, codes of conduct and core principles. The BIS is a good example in the area of financial services supervision where, due to a strong shared international culture, it has been possible to enforce standards (see annex), as well as to reach a high degree of voluntary compliance also by non –BIS members. The FAO Code of Conduct for Responsible Fisheries provides a further example.

#### **Case Study: *FAO Code of Conduct for Responsible Fisheries***

The International Conference on Responsible Fishing held in Cancun in 1992 called on the FAO, in consultation with relevant international organisations, to draft an International Code of Conduct for Responsible Fishing which would be observed by producer and consumer countries. In 1995 the FAO’s Committee of Fisheries (COFI) stressed the importance of the Code as a tool to support the implementation of the UN Convention on the Law of the Sea, as well as the fisheries aspects of UNCED. The Code was drafted by open-ended technical working groups in which NGOs participated as observers and made technical contributions to the process. The Code was adopted in 1995 by vast majority of FAO member countries.

The Code is a voluntary instrument. COFI is charged with monitoring its application and implementation. Working through its Governing Bodies, the FAO can revise the Code to meet new fishery developments and situations. The Code recognises that while policy decisions rest firmly with governments, its effective implementation requires wide stakeholder participation and cooperation. Its scope is broad and intended to be implemented in a holistic manner. It prescribes principles and standards for fisheries conservation and management addressing issues such as capture, processing, trade, aquaculture, research and coastal management, with special provisions developing countries. The Code re-enforces and support the goals of other fisheries instruments, such as the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks and International Plans of Action (IPOAs) concluded within the framework of the Code. Together, these instruments can be viewed as a package.

FAO is responsible for implementing the Code and providing technical support to national and regional initiatives aimed boosting public access to the Code, providing guidance and advice to policy makers and fisheries managers on how to implement it. Much of the Code has been or is being assimilated into national legislation in many countries. The adoption of a soft-law instrument on fisheries by the international community has been generally successful. It has been easier to mobilise the global community to act on responsible fisheries on a voluntary basis than on that of a hard law instrument. It is no coincidence that the UN Agreement on Straddling Stocks, also adopted in 1995, still lacks the 30 ratifications to enter into force.

Soft law instruments can help the development of customary international law because the principles and concepts they contain are accepted and applied by most countries and are referred to by international tribunals. Such principles are being transformed into operational rules at the regional level. Unlike a hard law instrument, as a voluntary tool, the Code is not enforceable before international courts and tribunals. Lack of implementation brings only "verbal condemnation" not enforceable judgements – often not enough. A hard law instrument, however, risks being accepted only by a few states and having a more limited impact.

### **3.4 Co-regulation and Self-regulation**

Co-regulation as a method can be an appropriate policy mix which combines a need for legal certainty of government with the flexible self-regulatory approach. It implies that self-regulation and regulation work together, either as a top-down or a bottom-up approach, i.e. regulation can precede or follow the self-regulatory process. The so-called “New Approach” is an example of co-regulation where essential requirements are defined by law while the private sector is invited to draft the technical harmonised standards which provide ‘presumption of conformity’.

The International Chamber of Commerce (ICC) is the world business organisation. It has thousands of member companies and associations in more than 140 countries. It is the only international organisation which speaks with authority on behalf of world business. ICC draws up self-regulatory voluntary rules and codes of practice for the conduct of business throughout the world. From e-commerce to banking to transport and trade, ICC is the principal institution of business self-regulation: It is the official business interlocutor with the United Nations, WTO and G8.; and the ICC International Court of Arbitration is the world’s foremost institution for the settlement of international commercial disputes. ICC operates through an open network of representatives, with Codes of Practice agreed by consensus following extensive consultation.

**Case Study:** *“Safe Harbour” approach to data protection*

Under EC Law (Directive 95/46/EC) personal data can only be transferred to third countries providing “adequate protection”. The EU must, therefore, enter into mutual recognition agreements with third countries if it wants to avoid data transfer being blocked. This is (relatively) easy with countries such as Switzerland and Hungary which have generally applicable data protection laws broadly in line with the EU Directive. The situation was much more complicated with the US so a “safe harbour” mechanism, which can be considered as a useful step towards a world-wide system of protection of personal data, was created.

The US’ sectoral approach to data protection has resulted in a patchwork of federal and state self-regulatory programmes and laws. So far, the US has not wished to enact general data protection laws for the private sector along the lines of the EU Directive. Under the so-called “safe harbour” agreement, the result of more than two years of dialogue between the Commission and the US Department of Commerce, US companies can voluntarily adhere to a set of data protection principles recognised by the Commission as providing adequate protection and thus meet the Directive’s requirements for transfer of data out of the EU. Although the “safe harbour” is optional, its rules are binding for those US companies that decide to join and compliance with the rules is backed up by the law enforcement powers of the Federal Trade Commission (the US Department of Transportation for airlines). The Commission’s adequacy finding is binding on all EU Member States.

In practice, the participating US company adopts an internal data protection policy, according to criteria recognised by the Commission; it also enters into an agreement with an independent body which provides an Independent Dispute Resolution Mechanism (IDR); the company communicates this policy to the public. This communication allows the FTC to act in case of breach on the basis of the misrepresentation principle. In practice, the individual who alleges a breach will first use the IDR and the FTC will treat as priority the complaints introduced if the IDR failed to solve the problem. The FTC does not have the final word: it will take the company to the court and it is the court which will decide.

**Recommendation Five:**

**The EU should use the growing range of proven approaches to global problems (benchmarking, peer review, non-hierarchical governance, , soft law and, where appropriate, co- and self-regulation) to build on the successful elements of hard international public law. It should not follow the favourite recipes of the past without close assessment of possible lower cost alternatives or complements.**

**PART THREE: IMPROVING THE EU’S ABILITY TO  
CONTRIBUTE TO GOVERNANCE BEYOND BORDERS**

There is a clear need, indeed a selfish interest, for the EU to take an active part in tackling global challenges, in contributing to global governance. Yet it is equally clear that the EU’s response so far has fallen short of the mark. There are two possible underlying causes:

Firstly, the objectives of EU society might be flawed in that too little importance is given to what is happening beyond the EU's borders. True, exposure through the media to world events is greater than ever but the very degree of exposure can trivialise events and their importance. Vivid images of war, flood, famine, drought, disease and a myriad other ills enter European homes daily via the media. Charity appeals, though well-meaning, represent no more than a sticking plaster approach to tackling major problems which require a concerted effort to get to the root of them if they are to be dealt with properly. Perhaps people care but simply not enough; people will help but only to the point where it does not involve meaningful sacrifice on their part. In the end, it could be that Europeans, like people the world over, simply put their own welfare and that of their families before that of groups of strangers living somewhere on the other side of the planet.

The second possibility is that EU society might indeed have the right objectives for tackling the problems but the institutions and decision makers, within the EU and beyond, are failing to reflect accurately the priorities and objectives of those in whose interest they are supposed to operate. There are several reasons why this could occur.

External influences could mean that decision makers and institutions could receive distorted messages from interests and lobbyists whose access to resources and representation of specific interests enable them to put forward a more targeted and honed message than a general but vague wish expressed by 'the people'. Indeed, the task of such groups is to do just that; to make sure that their priorities are pushed up the decision maker's agenda and that decisions taken on any given issue reflect their objectives. The population at large will in most cases be less affected by any single policy decision, especially where it involves elements beyond the EU's borders so even a general desire to see a better world or justice done will remain for most people just that, a general desire, and not one to which they are prepared to devote substantial resources. A company or organisation, on the other hand, might suffer quite direct effects from a policy decision and has, therefore, a keen interest in influencing the outcome.

There might also be internal factors. The development of EU institutional structures and practices is often slow, ad hoc and the result of compromise. The desires expressed by the people might not be being expressed because the decision-making structures, whilst representing the lowest common denominator of what is acceptable to those who devised them, could be sub-optimal. As a result, their decisions are also sub-optimal because in some instances too much energy and effort are spent on procedure relative to substance.

Obvious examples exist when considering internal rules for pooling sovereignty, for decision making, for organisation of external representation. Often different layers and degrees of pooled sovereignty, such as those pertaining to representation in international financial institutions, vie with one another for precedence, rank and prestige often resulting in confusion among the EU's partners and input from the EU which does not reflect its best interest. Moreover, the balance between institutions may be skewed e.g. the European Parliament has no voice in trade policy.

In fact, the problem of inadequate EU responses to global challenges could be a combination of both flaws in the objectives of EU society and in the ability of EU institutions and decision makers to ensure that their action reflects the best of those objectives in an optimal way.

### **Recommendation Six:**

**The EU needs to ensure that its internal institutional operability and decision-making processes are more responsive to those elements of its citizens' objectives which are supportive of global governance.**

## 1. The International Aspects of EU Identity

Empirical data suggests that when the EU acts on the international stage EU citizens feel the strongest sense of EU identity. Similarly, the willingness to see 'more Europe', more action at EU level appears to be greatest where the problems themselves to be tackled are at European or global level; in other words where the need or added value is felt to be greatest. Such attitudes are also reflected in US data suggesting that citizens there too are instinctively aware of their interest in the well-being of the rest of the world. The apathy of internationalism on both sides of the Atlantic is perhaps rooted in self-interest: enthusiasm is at its highest where the benefit is felt to be direct or clear, such as in security policy; the less tangible any gains are seen to be, the more enthusiasm wanes. Yet benefits need not be immediate or obvious for them to be real.

From a global governance perspective, it is important to make a greater effort on the creation of a strong EU identity and development of the awareness that the EU has a real interest in what is happening beyond its borders. From this perspective, the aspects of that identity extending beyond EU borders deserve particular attention.

The dream identity of the EU from this perspective would be, to echo the Melzer report's characterisation of US interests, to define our interest as resting fundamentally on the peace and prosperity of the rest of the world. Such a view is not starry-eyed, simply a realisation that our well-being is intrinsically tied up with that of other peoples', other countries'. In an increasingly integrated and interdependent global economy we cannot ignore events on the other side of the world, even less on our own doorstep. Patterns of land use, economic activity, environmental policies and conflicts in other countries can affect not only the global environment but the EU's own environment and current and future welfare of its citizens. Similarly, the EU's access to raw materials, fuels, components, finished products and markets depends on economic and political stability in other jurisdictions. Open trade and a framework of international public law of the kind provided by WTO rules are themselves conducive to such stability and explain in part the EU's support for strengthening them through a New Round of trade liberalisation negotiations. In turn, trade is one of the areas where the advantages of the EU speaking with a single voice are most evident and its ability to do so most developed.

The EU is not alone in its vulnerability to the vagaries of what is happening in the world, nor in its inability to 'save the planet' by unilateral action. Wars are more likely to start elsewhere than they are among the EU members but would probably sweep us up in their tide nonetheless so the EU has a real interest in security issues around the globe and in contributing to peaceful means of conflict resolution. Similarly, the demographics of this century will increasingly require the ageing players (Europe and Japan) to find new ways of cooperating with the youthful players (Asia, Africa – if AIDS can be contained there – and the Americas).

There are clear benefits from the EU being more active on the international stage, both for EU citizens and those elsewhere. The issue is how to develop the international identity the EU requires in order to give weight to its actions and obtain domestic support for them. The very act of visible EU intervention in areas such as peace-keeping and security is likely to reinforce the sense of identity felt by its citizens but, ironically, laying the groundwork for such a role might meet both political and popular opposition in some quarters e.g. the attempts to create an independent European military force. The maintenance of an assertive and positive EU global role is needed for there to be a feel good factor, for the EU to sense the positive and effective contribution it can make as a global and inter-regional player.

The successful management and projection of projects, including world firsts and some projects which are highly experimental, can help forge an EU identity, even if international action taken on the basis of such an identity is not in the same field. High profile and visible schemes such as the euro, JAI and the internal market touch the everyday lives of the EU's citizens and can help create a sense of commonality of experiences.

### **Recommendation Seven:**

**The EU should explain to its citizens the added value of it taking an active role in global governance.**

## **2. Improving the EU Model**

The purpose of this section is to highlight the strengths and weaknesses of the EC approach to defining its contribution to global issues. We have chosen to do so with three case studies, one on environmental, one on economic and financial governance, and one on development policy.

The cases studies below indicate the differences in EC modus operandi in the areas of international environmental policy, international economic and financial governance, and development policy. In the first, a pragmatic approach to institutional turf and the weaknesses inherent in the EC system has helped ensure the EC has been able to keep as many bases covered as possible. Furthermore, an open and inclusive stance has been taken vis-à-vis civil society involvement. In the field of international environmental policy the EC is very much the torch bearer. In the sphere of finance, however, a more rigid attitude to demarcation of competencies means, that despite the introduction of the euro, the EC continues to punch below its weight in international monetary fora. The overhaul of development policy seeks at once greater coherence and the ability to adjust to different needs.

### **Case Study: The EC and international environmental policy**

International environmental policy, its management and development is just one area where the shortcomings of the current system for the EC's international representation (i.e. six-month rotating Presidency) are becoming increasingly clear:

International environmental negotiations often last years but continuity is not ensured under the current system: our partners are often confused by having to deal with a series of interlocutors.

The technical and diplomatic skills of EC Member States are not homogeneous. It is a fact that assuming the role of international representation of the EC in environmental negotiations is a very difficult challenge and one which might become even more difficult with enlargement. A possible solution would be to give the Commission a stronger international negotiating role. Member States are reluctant to accept this solution, however, even in international negotiations relating to areas where EC competence is preponderant and the Commission would have difficulty in assuming a greater role because of practical constraints, notably acute lack of staff.

In recent years, some informal arrangements have been put in place to maximise the EC's impact in international environmental negotiations, to facilitate preparations and to ensure continuity. Two specific ad hoc experiences deserve mention:

The "lead-country approach" in the Commission on Sustainable Development (CSD). The CSD's annual meetings have a broad agenda covering several sectoral and cross-sectoral themes. To facilitate EC preparations, work is shared among Member States and the Commission. For each topic on the agenda, a position paper is drafted by the lead-country which, once discussed in the Council Environment and Development Group, becomes the official EC position.

The "EC-team" approach in the biosafety negotiations. In these negotiations, the EC was represented by the Presidency and the Commission with a preponderant role for the latter. At the same time, it was agreed to set up an expert team composed of Member State officials, chosen mainly on the basis of their individual expertise, who played an important role of technical support throughout the negotiations.

In the negotiations on climate change and implementation of the Kyoto Protocol, it is the Presidency which negotiates on behalf of the EC and its Member States. The Commission plays an important role, in particular on issues which need to be coordinated and harmonised at EC level (policies and measures, emissions trading, ratification process etc). Any official statement or submission has to be peer reviewed and accepted by all Member States. The EC is at the forefront of these negotiations but divergent views have sometimes emerged on specific issues; these have been seen as indicative of a lack of cohesion and coordination in the EC team e.g. the failure of the COP6 talks in The Hague and the public disagreements between some Member States both of which received considerable press coverage. Needless to say, such events help other Parties to attack the EC and undermine its position.

On the positive side, the role of civil society is also worth a mention. In line with its aim to consult all stakeholders at an early stage, the Commission consults with NGOs when defining its positions to be taken in important international fora or negotiations e.g. preparations for the 2002 World Summit on Sustainable Development.

NGOs also take part in Community delegations to international conferences. The idea originated in the Preparatory Committee for the 1992 Earth Summit in Rio. The Commission has developed a practice of including representatives of the NGO Community in its delegations to major international conferences, such as the Earth Summit or the WTO Ministerial in Seattle. At first, this practice was ad-hoc but evolved so that NGO representatives joined Community delegations as observers. NGO representatives are now part of Community delegations at most important international conferences and are allowed formal expert status within these delegations.

The Commission can draw upon NGOs' expertise and is informed first hand on positions adopted throughout negotiations by civil society. The presence of NGOs allows for a direct flow of information from the Commission towards civil society, enhancing the degree of understanding and acceptance of the former's positions. In effect, this practice is an extension of the internal Commission policy of consultation with stakeholders.

The Commission invites NGO participation but the NGO community designates the expert, usually via an NGO umbrella organisation. The NGO representative in the Community delegation (and as such falling under the diplomatic authority of the Head of Delegation) cannot, at the same time, participate in the same conference as member of the NGO community (the so-called "double hat" ban). NGO representatives cannot speak on behalf of the Community or participate in Community co-ordination meetings during the conference.

### **Case Study: International economic and financial governance**

EC participation in international economic and financial fora is quite recent, the catalyst for which was the beginning of Stage III of Economic and Monetary Union on 1 January 1999. Since the start of Stage III of EMU and the shift, in eurozone countries, of monetary policy sovereignty from national level to the ECB, the Community's role in international economic and financial governance has increased significantly. International economic and financial governance can range from an informal exchange of views on a specific topic to full formal co-ordination on a range of issues or membership of international organisations.

Attempts at improving ex-ante co-ordination for the adoption of common positions have been limited to the drafting of common understandings that guide the Presidency and Ministers in their dealings with non-EU countries. In 1998 the Vienna European Council agreed guidelines on the Community's external representation. For G7 Finance Ministers "the President of the ECOFIN Council, or if the President is from a non-euro area Member State, the President of the Euro 11, assisted by the Commission" participates. The views of the European Community/EMU on other issues of particular relevance to the EMU would be presented at the IMF board by the relevant member of the Executive Director's office of the Member State holding the euro Presidency, assisted by a representative of the Commission." On "issues of particular relevance to economic and monetary union", the Vienna conclusions encouraged the Commission, Council and Member States to prepare common positions for presentation in international fora but this might be hindered by not being fully associated with the preparatory processes of international meetings.

So far, *ad hoc* solutions to external representation have prevailed for the IMF, G7 Finance Ministers, the Financial Stability Forum, the G20 and other groupings<sup>1</sup> where issues relevant to EMU are discussed. Member States have begun to realise, however, that these *ad hoc* solutions are not the best way for the Community's voice to be heard internationally. There is also increasing pressure from emerging markets and non-European G7 countries for streamlining EC representation in bodies such as the IMF.

In the IMF, procedurally, the euro area dimension has been taken into account by the IMF through a twice yearly Article IV consultation of the euro area economic policies in addition to the traditional EU national consultation process. Institutionally, however, less progress has been made. The IMF Articles of Agreement<sup>2</sup> of 1945, confer on *countries* the right to become members. This is difficult to reconcile with the specific nature of the EC and EMU, in particular as the IMF is an IFI with a monetary character when precisely, with EMU, euro area Member States have lost sovereignty over monetary issues. Also, the IMF decision taking process, with countries grouped in mixed EU/non-EU constituencies can sometimes be at odds with the EC's need to respect the Treaty's requirements on position taking and representation.

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<sup>1</sup> In the OECD, the Commission has a specific status since 1963 and the ECB has been granted observer status. Problems of external representation are therefore limited to finding pragmatic solutions that organise the relations between the Presidency, the Commission and the ECB, in particular for the EDRC review of the euro area.

<sup>2</sup> See Article 2. 85% of voting capital is required in favour of any proposed amendment to these Articles.

A second set of issues concerns Community procedures for presenting positions at IMF meetings. The Council (not the Eurogroup) Presidency delivers a statement on behalf of the Community at the 6-monthly meetings of the International Monetary and Financial Committee. Efforts are being made to co-ordinate the positions of EU Executive Directors in the IMF Board and in putting the Eurogroup Presidency representative in charge of conveying the EC position, if any, to the rest of the Board. The ECB has obtained observer status in the IMF Board and can attend when issues of particular relevance for the euro area are debated.

Under the Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), a *country* must first join the IMF before it may become a member of the World Bank. Given this, and the fact that World Bank voting constituencies are organised along similar (sometimes mixed EU/non-EU) lines as in the IMF, the situation regarding EC representation within the World Bank is similar to that within the IMF.

At the G7, the Finance Minister chairing the Eurogroup (unless from a G7 country) is only allowed to attend the part of G7 Finance meetings where the economic situation and outlook and international exchange rates are discussed. He is not allowed to participate in other discussions such as on the reform of the international financial and monetary architecture. The ECB President enjoys the same limited rights. Moreover, the Presidency (unless from a G7 country) does not participate in the preparation of G7 Finance meetings<sup>3</sup>. As a result, participation of a non-G7 Presidency in G7 Finance is somewhat symbolic. Up till now, the Commission only attends the discussions on Russia and is not involved at all in the preparatory process<sup>4</sup>.

Two potentially major international financial fora have been created since the start of stage III of EMU: the Financial Stability Forum (FSF) (April 1999) and the G20, announced by G7 Finance Ministers in September 1999. Both were formed following the Asian financial crisis and aim to improve international financial stability. The Commission does not participate in either forum. The EU Presidency is not represented in the FSF<sup>5</sup>. It is a member of the G20 but its role is rather limited because of its six-monthly rotation. The ECB, however, due to the continuity of its participation, exerts more influence in these fora<sup>6</sup>.

The international role of the ECB merits further discussion given that the Treaty basis of its international role is not explicit and given its involvement in fora whose agenda may expand into areas beyond monetary policy.

EC representation is more explicit in the European Bank for Reconstruction and Development (EBRD) in so far as the Community, represented by the Commission, and the European Investment Bank are shareholders and members of the Board. EU Member States are also board members. As differences of opinion may exist between different representatives of the ECU at the EBRD, presenting a common EC position may not always be straightforward.

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<sup>3</sup> The ECB participates in this process.

<sup>4</sup> The Commission only participates in meetings of G7 Finance Sous Sherpas, as part of the Summit preparations, but these meetings are rare and the more substantial discussions tend to occur in the Deputies circuit.

<sup>5</sup> France, Germany, Italy, Netherlands and the UK are FSF members. When one of these countries holds the EU Presidency, it could be argued that the EU is "present" but not in a formal sense.

<sup>6</sup> Central Bank Governors participate in the FSF and G20. The ECB is present in the FSF in addition to the National Central Banks of the EU FSF members.

There are clear challenges to more effective EC participation in international monetary and financial governance. Firstly, how to develop effective and coherent EC representation within bodies that were set up for a membership comprising only states. Representational issues also arise with regard to newer fora, even those created after the start of Stage III of EMU. Secondly, there are challenges for reaching common EC positions. A lack of clear arrangements for external representation has considerably hampered the ability of the Community to speak with one voice in various international fora. As a result the Community position is often much weaker than that of the US, in spite of its similar financial and economic weight with the result that the full benefits of the euro are not being realised.

**Case Study: EC Development Policy**

The EC Development Policy (COM 2000/212, 26 April 2000) and the Statement adopted on 10 November 2000 by the Council and the Commission set poverty reduction as an overarching objective of EC development co-operation. Reducing and eventually eradicating poverty is also the central aim of the Cotonou Agreement (2000) which provides the legal framework for a comprehensive 20-year partnership between 77 ACP countries, the Community and its Member States, encompassing trade, political relations and development co-operation.

EC policy is part of an international strategy where a comprehensive view is currently emerging. The strategy adopted by the Development Assistance Committee of the OECD<sup>7</sup> has a key role in international co-ordination efforts. Other initiatives go in the same direction – such as the World Bank Comprehensive Development Framework<sup>8</sup>, or the IMF/World Bank Poverty Reduction Strategy Papers<sup>9</sup>.

The guiding principles behind these initiatives are developing country ownership of the development process and increased focus on the social dimension of growth and development. The overarching aim would be to refocus EC activities on poverty reduction and align the policy framework in different regions while observing the principle of differentiation at country level to reflect individual levels of development, taking into account issues of equity and economic, social and poverty indicators.

The EC shares responsibility with its Member States to be actively involved in implementing the outcome of international conferences e.g. Rio (sustainable development), Beijing (role of women), Cairo (population), Copenhagen (social development), Rome (World Food Summit) and Istanbul (HABITAT). These have helped shape a set of international development targets which were backed by the Millennium Declaration adopted by the Millennium Assembly in 2000.

The poverty focus of EC development co-operation policy is reflected at three levels:

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<sup>7</sup> Shaping the 21<sup>st</sup> Century: the contribution of Development Cooperation, May 1996.

<sup>8</sup> James D. Wolfensohn, *A Proposal for a Comprehensive Development Framework*, The World Bank, Washington D.C., January 1999

<sup>9</sup> The World Bank, *Building Poverty Reduction Strategies in Developing Countries*, Washington D.C., September 1999

Firstly, in the allocation of financial resources. EC financial resources will go to where they are most likely to reduce poverty efficiently and sustainably. Resource allocation must be related to the 2015 poverty reduction goal, i.e. focussed on least developed and other low-income countries, middle-income countries with large populations of poor people and, within these, to the countries most demonstrably committed to poverty reduction. Results and absorption capacity are also taken into account. In middle income developing countries, the EC's support to capacity building can be more appropriate than capital transfers.

Secondly, in the drafting and implementation of country strategies and Poverty Reduction Strategy Papers (PRSPs). The advent of PRSPs in 1999 represents a key turning point in aid policy. PRSPs are prepared by developing country governments following a process of consultation with civil society and the private sector. They analyse the country's poverty and set a plan for reducing it. Since the PRSP idea began, the European Commission has committed itself to the process and has linked aid programming to PRSPs in all countries concerned.

Within PRSPs the Commission focuses on a number of major issues:

- Ownership and participation (allowing more scope for Governments to make choices on national policies based on a high quality participatory process);
- Good governance and fight against corruption (monitoring how far CSPs and PRSPs address public expenditure management to ensure resources are used as intended);
- Donor coordination - ensuring an early start to discussions with development partners;
- Prioritisation of actions and use of result indicators (definition of a limited number of clear, simple and achievable aims, translatable into measurable indicators of success);
- Growth and Equity (patterns of public expenditure and access to social services, allocation of assets and wealth and implications of tax policies for equity);
- Linking disbursements to results (need to review aid modalities and donor instruments under PRSP whereby at least a portion of aid is clearly linked to performance);

Thirdly, the choice of EC priority areas of intervention. Priority areas have been identified in the Development Policy Statement (trade and development, regional integration and co-operation, macroeconomic policies and social sectors, transport, sustainable rural development and food security, and institutional capacity building, good governance and the rule of law). These areas were selected due to their importance in contributing to poverty reduction and because it was felt that the Commission has a comparative advantage in them relative to other donors. The EC Development Policy has further identified human rights and democratisation, gender and environment as crosscutting issues to be integrated in each of the priority areas.

Finally, the Commission is developing a set of instruments, tools and working methods for mainstreaming poverty reduction. Programming guidance (incorporation of guidance on poverty reduction into the Country programming guidelines) and thematic and sector guidelines (health, AIDS and population, education, food security) have been developed. Guidelines have also been produced on implementation of the Cotonou Agreement regarding the participation of civil society and other non State actors. The Commission is also strengthening its capacity at headquarters and country level and reinforcing coordination and complementarity.

The Commission has channels for regular dialogue with EC Member States, OECD/DAC, Bretton Woods Institutions (BWI) and the UN system. Technical meetings are held with Member States experts to share policy and practice and determine a coordinated EC approach (in education, health, social development, macroeconomics, water, etc). The Commission participates in the DAC Informal Network on Poverty Reduction and related Working Groups. It is a member of other donor fora such as the Strategic Partnership with Africa (SPA) and the Consultative Group to Assist the Poorest (CGAP). Regular high-level dialogue takes place with the BWI on cooperation on the PRSP process. On public expenditure management and accountability, the Commission and World Bank are in the process of co-financing a Trust Fund in which other key donors may also participate. The Commission cooperates closely with BWI on issues related to macro-economic and budgetary support. In the future, the Commission intends, among others, to:

- work towards stronger ownership by developing countries and co-ordinated approaches at country level.
- continue to organise Member States expert meetings to achieve common strategies and a jointly owned EC approach;
- co-finance poverty reduction strategies with Members States and other donors;
- prepare guidelines and priorities for co-operation with the UN (in implementing the EC/UN Communication);
- explore, on the basis of the PRSP process, the possibility of World Bank/Commission co-financing support to the implementation of PRSPs in ACP countries;

**Recommendation Eight:**

**The Given its weight, responsibility and interest, the EU needs to strengthen significantly its international representation and ensure that it speaks with a single voice in international and regional fora.**

### **3. Enhancing Coherence between EU Policies**

If it is clear that there is a need for greater coherence between EU policies, it is equally so that coherence between Community policies and those of the Member States is also essential if the EU is to speak with single voice.

**Case Study: *The Cardiff Process and Development Policy***

Article 6<sup>10</sup> of the EC Treaty includes a commitment to integrate environmental concerns into all Community policy areas. In order to prepare strategies for such integration, in 1998 EU Heads of State and government launched the so-called Cardiff process. Yet environmental integration is not a new commitment for the EC: for development co-operation, Treaty Article 177, for example, already stipulates that sustainable development must be one of its objectives.

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<sup>10</sup> Article 6 states: “Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.”

On the basis of a 1999 Commission Communication<sup>11</sup>, EU Development Ministers discussed integration of environment and sustainable development into EC economic and development co-operation and presented a report to the December 1999 Helsinki Summit. The report recognised the importance of integrating environmental objectives into EC economic and development policies thus supporting partner countries' own efforts to implement sustainable development. It called on the Commission to prepare a comprehensive strategy for the May 2001 Development Council with a timetable and performance indicators to enable monitoring.

In March 2001, the Commission presented to the Council a paper on "Integrating the environment into EC economic and development co-operation: a comprehensive strategy". The paper focuses on poverty and environment, and on mainstreaming environment into the six priority themes of the Commission's Development Policy. There will be an evaluation of the environmental performance of the Commission's aid policy and transparency will be improved through more comprehensive and timely reporting and updated and standardised environmental procedures. There will also be pilot studies on economic reform programs, environmental profiles when preparing country strategies, analysis of the environmental impacts of agriculture, trade and fisheries policies, and improvement of in-house capacity to integrate environment aspects. The Development Council will adopt conclusions on 31 May 2001.

The document also emphasises:

- The role of civil society in developing countries in the sustainable development process;
- The Commission's obligation to screen all new policy proposals in line with Treaty Article 178 and, where necessary, adjust them for purposes of coherence;
- Transparency of environmental procedures (In country programming: Country Environmental Profiles and Strategic Environmental Assessments);
- Early access to project information and timely consultation of stakeholders in developing countries, as well as improved quality and timeliness of information;
- The development of performance criteria to measure progress so as to steer the environment integration process, with quantitative and qualitative indicators e.g. adequacy of integration into country programmes, quality of integration into macro-economic reform programmes.

### **Recommendation Nine:**

**The EU should continue to nurture greater coherence between all policy areas in order to strengthen its contribution to global governance: the sustainable development strategy is a key opportunity to do this.**

## **PART FOUR: WORKING OUTSIDE THE EU**

### **1. Streamlining the Bodies that Exist**

There is considerable scope for streamlining and reforming existing bodies engaged in global governance, and their internal structures, in order to enhance their effectiveness and ability to enforce policies.

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<sup>11</sup> Commission Communication COM(1999)499 of 20 October 1999 "Elements of a strategy to integrate environment into EC economic and development co-operation" and in COM(2000)264 of 18 May 2000.

The main international institutions of global governance had their foundations laid down towards the end of and after the Second World War: the Bretton Woods system, the United Nations, the GATT and other bodies. In the UN the victors of WWII assured themselves of a permanent veto in the Security Council, a position they still enjoy today. The development of these first institutions of global governance was stunted and distorted by the geopolitics of four decades of Cold War. In the years which have passed since the end of that 'war' global governance has evolved considerably. The demise of the bloc system has not caused geopolitical concerns to evaporate but it has created a world in which arguably countries are freer to act without each move being assessed primarily from the strategic viewpoint. A growing number of increasingly more advanced developing countries now play an important part in the institutions of global governance. Above all, the states-based system of governance has been challenged by the mushrooming of civil society interest and participation.

In the meantime, the structures and working practices of these institutions have remained in virtual stasis exposing them to increasingly frequent criticism. Critics claim structures are rigid, outdated and overly hierarchical and that working practices lack transparency and openness to input from non-governmental players. Such shortcomings have given rise to charges that these bodies lack legitimacy and sometimes work to agendas of their own choosing rather than in the broader public interest. Issues of legitimacy become all the more acute when such institutions appear to be free from democratic oversight or control, in particular from national parliaments, a perception which makes them seem even more remote. The structures and practices with which they were endowed, sometimes half a century ago, can make them sometimes seem like cumbersome dinosaurs unable to react with sufficient speed to new and urgent challenges.

That there is scope for substantial reform of these bodies is beyond argument but the issue of how they should be reformed seems facile in comparison to the question of how they could be reformed. As the power centre of the UN, the Security Council is an obvious starting point but any mention of updating it so that its membership reflects current geopolitical reality creates a furor. The fine, albeit unequal, balance of interests in the present set up of the UN system means that any 'losses' accruing in one part to a member or entity are bound to be met with calls for compensation elsewhere. As a result, it will be difficult to secure a reform which is not in itself sub-optimal.

At the root of this is the erroneous but widely peddled belief that we are engaged in a zero sum game; any 'loss' will always be absolute and can never be compensated for by benefits arising from the greater good only by a direct quid pro quo elsewhere.

Although the EU also suffers to a certain degree from such views, it has been possible over time to persuade Member States to pool sovereignty and thus to incur a direct 'loss' in exchange for the broader benefits to be reaped from integration. The EU can provide a working example, therefore, that engaging in such a process can be worthwhile. The EU could consider trying to kick-start UN reform by taking steps which, although seeming to impose a cost or loss on the EU, would in the broader view result in gains because they could trigger a wider reform process – but this would happen only if other UN members acted upon such an initiative.

**Case Study: *A new EC-UN new partnership in development and humanitarian affairs***

In May 2001 the Commission adopted a Communication aimed at improving EC-UN relations in the fields of development and humanitarian affairs. The Communication tackles relations both at policy making and operational levels and proposes innovative approaches that should contribute to improve the overall quality and impact of EC development and humanitarian policies.

The new strategy for improved co-operation with the UN relies on and benefits from the ongoing overhaul of the Commission's system of operations in the field of external activities (strengthening of the programming process, de-concentration and decentralisation, result-based approach). It pre-supposes increased co-ordination between Member States and the Commission, namely in international fora and in partner countries. It is based on increased complementarity both between the Community and its Member States and the Community and the UN.

The aim is to strengthen efforts to explain and project EC policy priorities in the UN context and to increase its presence and input into different governing bodies of UN entities as well as in the UN's political and statutory bodies and to participate more actively in policy debates in these fora. Increased co-ordination and Member State and UN support for strengthening Commission participation in the work of UN bodies is essential to greater EU credibility and influence in the development and humanitarian fields.

At operational level, the Commission is actively creating a better environment for improving co-operation (Country Strategy Papers, new internal working group to co-ordinate Commission's efforts, recasting the Financial Regulation, re-negotiation of the EC-UN Framework Agreement).

Moreover, the Commission is launching an analysis of the mandates and capacities of partners in the UN in order to see how their key capacities match with EC policy priorities. This analysis will be based on transparent criteria such as operational capacity, ability to focus on particular comparative advantages and efficiency and accountability record. On the basis of this exercise, the Commission will propose upgrading its relationship with selected UN partners. The Commission's objective is to create strategic partnerships with these agencies, funds and programmes leading to real policy-definition and co-programming processes. The Commission would initiate a strategic dialogue aimed at ensuring sufficient convergence of views on objectives and management practices in order to make predictable EC funding available to them.

***Case Study: UNEP and the development of global governance in the area of environment***

International action in the field of the environment has experienced an impressive expansion in the last 30 years. Before the 1972 Stockholm Conference on the Human Environment, there were only a few regional and sub-regional environmental agreements in areas like nature protection and management of international rivers. Today, more than 200 international environmental treaties exist, as well as various global and regional organisations dealing with environmental issues. Environmental protection has also emerged as a real foreign policy issue, as demonstrated by the ongoing debate on climate change and the Kyoto Protocol.

International environmental action has been developed without a coherent strategy and without a clear institutional design. In fact, most international environmental agreements have been concluded on a case-by-case basis, to address specific problems as they arose so that the current "system" of international environmental governance is highly decentralised:

Set up in 1972 as the main body to promote international environmental action, UNEP suffers from major deficiencies which prevent it from being the central policy-making body:

- As a mere UN Programme it is institutionally weak;
- Its financial basis of mainly non-assessed voluntary contributions is unpredictable;
- Its location in Nairobi has put UNEP on the periphery of the global governance system.

UNEP is, in part, a victim of its own success. It has carried out its main task, the promotion of international environmental law, very efficiently. The result is that most policy and rule-making functions are performed by MEAs, which operate as separate legal entities whose Conferences of the Parties (COPs) have emerged as the main decision-making bodies.

Environmental policy-making and financing are dissociated. The main financial instrument in the field of the environment is the Global Environment Facility (GEF), which operates under Bretton Woods rules (i.e. with dollar-based voting rules), whereas UNEP and MEAs operate under standard UN rules (i.e. "one country - one vote", and the search for consensus). Other salient features of the current system of international environmental governance include:

- Development of an inclusive/participatory approach, to promote the involvement of non-governmental stakeholders.
- "Common but differentiated responsibilities". A key principle in the Rio Declaration on Environment and Development, it is significantly influencing the development of international environmental law e.g. it is reflected in the Kyoto Protocol as the guiding principle to differentiate the obligations of developed and developing countries.
- Reliance on non-judicial instruments to ensure compliance with international rules. As indicated below, dispute-settlement mechanisms are not an effective tool in the field of the environment. Non-compliance mechanisms are being developed as an alternative system.
- Weaknesses of regional frameworks. Only in Europe are there effective regional institutions working in the field of the environment and a network of regional environmental agreements. This is a major gap, since many environmental problems require action mainly at the regional or sub-regional level.

### ***The Reform of the System of Global Environmental Governance***

There have been several attempts to strengthen international environmental institutions, particularly UNEP. In 1999 on the recommendation of a Task Force headed by UNEP's Executive Director an Environment Management Group in the UN and the Global Ministerial Environment Forum (GMEF) were set up. These modest reforms are clearly not sufficient. Within the EU, there is a broadly shared view that more should be done to reinforce UNEP's stature and authority and to bring increased coherence into international environmental action.

Global environmental governance was much discussed during the French Presidency, and in December 2000, the Environment Council adopted a set of policy conclusions on this matter. The debate continues and under the mandate given to Environment Ministers by the Nice European Council, further recommendations are being prepared for consideration at Göteborg.

The debate has also been re-launched at the international level. In February 2001, the GMEF decided to set up an Intergovernmental Working Group (IWG) which will report to the next GMEF meeting in the first half of 2002. The results should be fed into preparations for the World Summit on Sustainable Development (WSSD) in September 2002. The scope of the IWG's work is not yet clear, although it will cover UNEP's future role as well as its financing. However, it is not sure whether the issue of improved compliance with MEAs will also be covered (this item might be left to the Working Group on Compliance and Enforcement of MEAs, which was also set up at in February 2001 by UNEP's Governing Council).

## *Current Thinking*

When global environmental governance was discussed by EU Environment Ministers in July 2000, the main issue was whether to copy the WTO model in the environmental field. The French Presidency favoured the creation of a World Environment Organisation (WEO) as the central body managing all MEAs, as well as a centralised dispute settlement mechanism. However, this view has not prevailed.

The establishment of a new body with an enhanced status to replace UNEP remains an intellectually attractive option for the longer term but there is an emerging consensus that progress will be easier on the basis of an evolutionary, step-by-step approach than through an institutional "big-bang". This means that, in the short term, the main priority should be to reinforce UNEP both politically and financially by building upon recent reforms. It is also clear that the creation of a new institutional setting will require long and difficult negotiations. If the process is not cautiously managed, there will inevitably be serious disruptions.

The establishment of a centralised dispute settlement mechanism for MEAs is, in any case, an option that should be discarded. MEAs, are instruments to protect the "global commons. They serve general, often non-quantifiable, interests of an indirect and never immediate nature. Therefore, the violation of an MEA does not primarily have a detrimental impact on individual countries but on the broader interests of the international community. This is clearly the reason why, although a dispute settlement mechanism is part of almost every existing MEA, there has never been any dispute under an MEA.

## *Priorities*

**Better co-ordination among MEAs:** MEAs will, and should continue to, play a pivotal role in any future global environment governance system but more and better co-ordination is needed, particularly among MEAs addressing the same policy area (e.g. biodiversity, chemicals). This would make the system more coherent, rationalise the international agenda and avoid duplication of efforts. It seems obvious that UNEP play a leading role in this endeavour.

**Improve UNEP's financial basis and replenish the Global Environment Facility (GEF):** Assessed contributions or, at least, a pluriannual financial arrangement with firm commitments by all donors are needed to enable UNEP to perform its tasks effectively. Stronger global environmental governance requires a central body with sufficient and predictable funding. The financial burden should be more equitably shared: the EU contributes more than 50% of UNEP's core budget. The GEF is the funding mechanism for most key MEAs. It must be substantially increased at the next replenishment in 2002 and perhaps extended to cover areas like chemicals, notably persistent organic pollutants (POPs).

**Establish effective non-compliance mechanisms in MEAs:** An ideal non-compliance system would allow non-governmental actors to log complaints; the establishment of an independent body to manage the system; and the availability of a wide range of different measures, ranging from positive measures to sanctions, when a case of non-compliance has been established.

**Develop international environmental law:** With more than 200 MEAs in force, the pace of international environmental law-making should be reduced and more emphasis should be put on implementation. In some areas such as biodiversity, fewer agreements would be desirable. At the same time, some e.g. chemicals, are insufficiently covered. Such gaps should be filled.

**Promote regional and sub-regional environmental co-operation:** Many environmental problems require action at the regional and sub-regional level yet most regions lack the necessary frameworks. The development of institutions and legal frameworks at the regional level is therefore important. This should be coupled with capacity-building at national level. As shown by the Kyoto protocol, there is a basic problem for which no immediate solution seems to be available, namely what to do when a country refuses to take part in international efforts to protect the global environment and how the obligation to co-operate to address international and transboundary environmental problems can be enforced. This is probably the most difficult obstacle to build an effective system for global environmental governance.

***Case Study: Coordination of the UN system with other institutions***

Strengthening coordination among the various bodies of the UN System and other international partners (IFIs, WTO etc ) is at the heart of the UN's reform strategy. The UN system and its specialised Funds, Agencies, Organisations and Programmes are coordinated by the UN Economic and Social Council (ECOSOC) comprising several Commissions, Committees and Working Groups. The 1996 ECOSOC Resolution on cooperation between the UN and the IFIs provides new rules for improving UN cooperation with IFIs. Its main guidelines aim to:

- coordinate the implementation and follow up of commitments made by the UN and IFIs;
- improve cooperation and coordination in beneficiary countries, particularly by improving exchange of information on country strategies, indebtedness, macroeconomic conditions, sectoral adjustment strategies, reforms etc, and by common ex-post evaluation methods;
- pool external resource mobilisation and fund- raising activities;
- report jointly on socio-economic conditions and programmes;
- hold joint high level special meetings at a time "proximate to the semi-annual meetings of the Bretton Woods Institutions"; and
- hold regular consultations and organise jointly high level initiatives on special issues, such as development finance, external debt, global financial integration etc.

***UN-IMF coordination***

To build a more effective inter-institutional relationship, the IMF has opened representative offices in New York, Paris and Geneva to cover relations with the OECD, the EU, the ILO etc., as well as a regional office in Tokyo to cover relations with ASEAN and other regional fora.

The IMF participates in the activities of the G-7, G-10, G-20, G-24 and the Financial Stability Forum in order to promote cooperation on international financial stability and capital market movements. The Chairman of the IMF International Monetary and Financial Committee and the Managing Director of the IMF brief ECOSOC regularly. The IMF now participates in several UN Commissions and Committees and plays a more active role in areas such as sustainable development, dialogue with the Civil society, capacity building etc. IMF empirical work on the social impact of adjustment and macroeconomic determinants of poverty has benefited from access to several UN agencies data bases. Cooperation between the IMF and UNICEF is increasing, with a view to targeting adjustment programmes to the poor, and with the ILO for social sector indicators. The IMF has intensified its cooperation with several UN agencies for emergency-related financial assessments and post-war reconstruction programmes.

### ***World Bank coordination with the IMF and UN***

Inter-agency cooperation has grown considerably since the late 1980s in the framework of debt relief operations, support for transition to market economies, and the financing of structural adjustment programmes in developing countries. After the financial crises which hit many countries in the 1990s, cooperation between the UN, the World Bank and other regional financial or development agencies was stepped up. Since 1997/98 inter-agency partnership has been helped by the World Bank's approval of a Comprehensive Development Framework and the creation of the Global Development Network among the main multilateral development institutions.

In 1998 the IMF and the World Bank created a joint Financial Sector Liaison Committee (FSLC) which has set out guidelines for inter-institutional cooperation in financial sector reform in beneficiary countries. Other joint IMF/WB initiatives include the Financial Sector Assessment Programme, closer coordination of their financial instruments, joint assessment of good governance and transparency, joint reporting on the Observance of Standards and Codes (ROSCs), joint preparation of Poverty Reduction Strategy Papers, and joint management of the Multilateral Debt Relief Initiative (HIPC). Coordination of performance criteria, benchmarking and impact assessment has also grown. In 1999 a IMF/World Bank Concordat was signed to define better the respective roles and mandates, enhance policy coordination and improve integration of financial instruments. Cooperation between the World Bank and the UN specialised Agencies and Organisations has been strengthened considerably, e.g. in poverty alleviation, environmental protection, sustainable development, and fighting AIDS in Africa.

### ***IMF/World Bank coordination with WTO***

Following a 1996 IMF-WTO Cooperation Agreement, the WTO Secretariat now regularly participates as an observer at meetings of the IMF Committee on Liaison with WTO and other meetings of the Executive Board. The IMF also works closely with the WTO in the framework of the Committee on Balance of Payments Restrictions. At the WTO Seattle Ministerial, the WTO, the IMF and the World Bank issued a joint statement underlining the need for greater policy coherence among them, particularly regarding market access for developing countries and the reform this would need. The Integrated Framework (IF) all the main multilateral agencies (WTO, UNDP, the World Bank, IMF, UNCTAD and ITC ) and developed countries. It provides trade-related assistance to help developing countries integrate into the global economy.

## **2. Regional representation in international organisations**

It might be possible to achieve greater efficiency in international bodies if there were more representation at the regional level thereby reducing the number of actors involved. In bodies such as the WTO, the EC speaks with a single voice, the formulation of the EC position taking place prior to or in parallel to actual negotiations. EU membership is soon expected to almost double. Although this might complicate the EC's internal process for formulating positions, it will both further simplify international negotiations and add weight to the EC's voice in them.

If other regional groupings were able to develop similar processes for speaking as a group, the dynamics of international negotiations could be helped by reducing the number of players round the table. Clearly, the less disparate any given group, the easier it will be for it to reach a position which reflects the broad interest of its members. Such pooling of interests need not imply regional integration per se, even less presuppose that such integration ought to follow the same lines as that of the EC, but others could draw on Europe's experience.

A single EC position on trade matters has meant not only a stronger voice for EC countries as a whole but for individual countries too, both large and small. Indeed, the contrast in efficiency between a united EC position in the WTO and the looser lines toed in the UN and the associated differences in influence are evidence of the added value of unity. In fora such as the WTO, representativity could be improved by a green room comprising participants representing groups so that no WTO member were excluded; each green room participant would speak on behalf of a particular group.

Clearly, the challenges for countries to reach coordinated positions would be great: even within the EC with its own special structures, the process is often long and complicated. The potential benefits of greater regional representation, however, suggest that it is an avenue worth exploring.

### **Recommendation Ten:**

**Drawing on ideas emerging from Member States and civil society, the EU should launch a comprehensive internal discussion on the necessary reform of multilateral institutions in the medium to long term. The aim should be to boost the effectiveness and powers of enforcement of such bodies by identifying resources and structural change taking into account the specific nature of problems confronted by each organisation and scope for action at global/regional level.**

## **3. Opening and Networking Institutions**

International institutions that constitute the main bodies of global governance are frequently criticised because of their lack of transparency and openness, intellectual as much as actual, although there exists a wide spectrum of degrees of openness among the various institutions on question. The constant barrage of criticism, in particular from civil society but also from members, has raised questions of legitimacy and prompted some of them to inch open their heavy doors and to allow some non-governmental actors the ‘privilege’ of catching a glimpse of what goes on inside. Some member countries of these organisations have exhibited near allergic reactions to the shafts of light let in by such open doors and to civil society participation. Nevertheless, such exercises have produced positive results and a return to the positions of only a few years ago already seems unimaginable.

### **3.1 MEA Information Sessions at the WTO Committee on Trade and Environment**

The MEA (Multilateral Environmental Agreement) information sessions organised by the WTO’s Committee on Trade and Environment (CTE) usually take place immediately prior to the formal meeting of the CTE and so are technically informal and not part of the meeting itself. Representatives of MEA secretariats provide CTE participants with explanations of how the MEAs operate and, in particular, of the trade measures they contain. At first, some WTO members only grudgingly accepted the convocation of such meetings but over time the value, to both trade and environment officials, of the exchanges of information has been recognised increasingly widely. As their knowledge and understanding of the various MEAs develops, CTE delegates are posing questions which are more specific and more targeted. Similarly, the points raised by delegates have drawn the attention of MEA secretariats to the theoretical and operational concerns of the trade community. The MEA sessions have become, if not institutionalised, part of the landscape of the CTE’s annual activities and bear witness to the real benefits that can accrue from greater receptiveness to input and ideas from beyond the usual confines. The EU has consistently supported the holding of such sessions.

### **3.2 Civil Society Involvement in the WTO**

The WTO has also held informal meetings with representatives of civil society including, on the basis of a suggestion from the European Commission, high level symposia on trade and environment and trade and development. Such ad hoc measures are useful first steps towards greater civil society involvement but meaningful and operational input by civil society can, in the longer term, only be realised on the basis of a more structured relationship in which civil society representatives have a clearly defined status. To the extent that membership of most international organisations is likely to remain largely country-based, the degree to which a level playing field could or should exist between representatives of governments and civil society is questionable. Civil society has undoubtedly considerable expertise which it could usefully feed into the workings of international organisations, however, and the very existence of clearer structures for channelling this input and the responsibility it would bring could encourage civil society representatives to further refine their contributions.

The Commission's own efforts at promoting civil society participation in its ongoing reflections in various areas, for example trade policy, has borne witness to a progressive development of external input. As discussions have developed, it has become possible to discuss issues in detail rather than merely exchange policy statements. The result has been positive. The extent to which other WTO and UN members engage in similar processes is, of course, a matter for them, although the EU can indeed encourage broader outreach. Within international organisations themselves, though, the EU and its Member States are free to argue for greater openness and participation. How these can be articulated in such bodies without impinging on the legitimate rights of their members is probably something to be decided on a case by case basis.

### **3.3 The Role of NGOs within IEA bodies**

Some international environmental agreements (IEAs), either the text of the agreements themselves or their rules of procedure (RoP), allow for NGO participation in their work. NGOs sometimes participate in the negotiation of an IEA, such as that of the 1998 Prior Informed Consent Convention. Standard practice since the 1992 Earth Summit in Rio is that NGOs are allowed to contribute but not negotiate. Apart from this "*locus standi*" in negotiating processes, NGOs can also have a role in the Conferences of the Parties, the main decision making body of an IEA. An NGO will inform the IEA's Secretariat of its wish to be admitted to a COP as an observer, a request that is to be fulfilled, unless a given number of Parties object. Observer status normally entitles an NGO to participate in a COP without the right to vote.

NGOs also have an implicit role in IEA compliance mechanisms, similar to that individuals and civil society actors play in EC infringement procedures by bringing complaints to the Commission. NGOs are cannot "trigger" proceedings on alleged non-compliance by a Party to an IEA but can sometimes provide those who are allowed to with information thus enabling the latter to build up a case. This is important as many IEAs put great emphasis on compliance.

### **3.4 Amicus Briefs**

Within the WTO, the submission of amicus curiae briefs in dispute settlement represents one form of civil society participation and a potentially useful means of drawing on the diverse expertise that civil society groups can offer. Yet the status of such submissions continues to be unsatisfactory in so far as it effectively remains at the whim of any given panel and there is no obligation to take their contents into account. Anchoring universal acceptance of such briefs would be a step forward in efforts to secure an operational framework for civil society input.

### **Recommendation Eleven:**

**In the short term, the EU should strive to promote greater coherence between existing international organisations. The EU should also continue to champion greater openness and transparency in international organisations. The aim should be that all members can play a full role, institutions are open to contributions from outside players, and institutions have greater legitimacy in the eyes of those affected.**

## CONCLUSION

Governance beyond the EU's borders affects not only the rest of the world but has an important influence on the EU's own security, its citizens' well-being, its environment, its export markets, its access to goods and raw materials. It is clear, therefore, that the EU and its citizens have an interest in influencing and improving governance beyond the EU's borders.

Although such linkages might be self-evident, this paper shows that there is much to be done to convince EU citizens that greater EU involvement in governance beyond its borders is worthwhile. This is just one of the recommendations set out in this paper. The paper also recommends that the EU should devote more attention to the impact of its actions on other countries and refine analytical tools to do so.

The EU's own experiences regarding internal governance borders mean it has a comparative advantage in certain areas and, although we do not suggest the EU model should be replicated per se, it does provide many useful pointers as to how parts of global governance could further develop, for example as regards defining basic objectives, management of diversity and breadth of participation.

It is also clear that there are aspects of the EU's own governance which could be improved, both for their own sake and in order to further strengthen the EU's input to better governance elsewhere, for example, greater coherence between policies, streamlining of decision making processes and simplifying the EU's external representation in fora of global governance.

Despite the scope for improvement in some areas of internal EU governance, the Working Group which drafted this report was nevertheless convinced of one thing: the need for a strong and active EU role in seeking better global governance and the positive contribution such a role could bring. As such, the ways in which the EU could contribute to better governance beyond its borders must be a key element of any deliberations on governance in general.

## ANNEX I

- **UNAIDS**

Launched in 1996, the Joint United Nations Programme on HIV/AIDS (UNAIDS) is a positive example of synergies from enhanced co-operation of existing organisations taking an innovative approach to create a new framework for coordination. It combines the efforts and resources of seven UN system organisations - UNICEF, UNDP, UNFPA, UNESCO, WHO and the World Bank, joined in 1999 by UNDCP. It aims to help prevent new HIV infections, care for the infected, reduce vulnerability to HIV/AIDS, and mitigate the epidemic's impact and, by engaging both government and civil society, to tackle the epidemic's impact on human lives and on social and economic development. UNAIDS uses the unique expertise, resources, and networks of influence that each of the seven organisations offers, as well as joining forces with other UN agencies, national governments, corporations, media, religious organisations, community-based groups, regional and country networks of people living with HIV/AIDS, and other non-governmental organisations.

UNAIDS is run by a Programme Coordinating Board (PCB) comprising representatives of 22 governments from all regions of the world, the 7 UNAIDS Cosponsors, and 5 non-governmental organisations (NGOs), including associations of people living with HIV/AIDS. UNAIDS is the first UN programme to include NGOs in its governing body. In developing countries, UNAIDS operates mainly through the country-based staff of its seven co-sponsors. Meeting as the host country's UN Theme Group on HIV/AIDS, representatives of the co-sponsoring organisations share information, plan and monitor coordinated action between themselves and with other partners, and decide on joint financing of major AIDS activities in support of the country's government and other national partners.

- **Finance for Development (FfD)**

The FfD process is the preparatory process leading to the International Conference on Financing for Development to be held in Mexico in 2002 at the highest political level. One of the most important elements of the FfD process is the permanent effort to involve other stakeholders and to make the process "system-wide". At the initiative of the General Assembly, special working relationships have been established with the World Bank, the World Trade Organisation and the International Monetary Fund including the provision of staff by these bodies and the holding of informal discussions. This is the first time a UN Conference has tried to involve systematically all other relevant stakeholders, an approach the EU has supported since the beginning. The differences in the modus operandi of the UN, the Bretton Woods Institutions and WTO have led the General Assembly to adopt a resolution on the stakeholder participation.

- **Internet Governance**

Comprehensive information about Internet Governance is available on the Internet at the following sites:

The Internet Society: [www.isoc.org/](http://www.isoc.org/)

The Internet Engineering Task Force: [www.ietf.org/](http://www.ietf.org/)

The Internet Architecture Board: [www.iab.org/](http://www.iab.org/)

The Internet Engineering Steering Group: [www.ietf.org/iesg.html](http://www.ietf.org/iesg.html)

The Internet Research Task Force: [www.irtf.org/](http://www.irtf.org/)

The Internet Societal Task Force: [www.istf.org/](http://www.istf.org/)

- **The Bank for International Settlements (BIS)**

The Bank for International Settlements (BIS) was set up in Basle in 1930 to foster international monetary and financial cooperation among the treasuries and central banks affiliated to it. BIS shareholders comprise more than 50 central banks around the world. Indeed, after the Asian financial crisis, the BIS has broadened its membership base and today includes several central banks of developing or emerging markets. Most recent new members are Malaysia, Argentina, Thailand, Mexico, the Hong-Kong Monetary Authority and the European Central Bank.

The Bank is a counterpart to central banks in their financial operations and provides agency and trustee functions for a variety of financial transactions. Standing Committees of national experts and their sub-groups set standards or recommend 'best practices' to promote financial stability. The two most important are the Basle Committee on Banking Supervision, which sets the "core principles" on capital adequacy, and the Basle Committee on Payments and Settlement System. The 'voluntary' adoption of these non-binding instruments by Governments or private actors has been progressively transformed into de-facto binding commitments, based upon shared 'best practice' rules. The enforcement of these rules has become an essential factor to measure and assess the credibility or the financial reputation of a financial institution. Non compliance could lead to a wide range of official sanctions or market-based penalties. BIS codes of conduct also cover accountancy practices, setting of standards, reporting and financial transparency.

The BIS also organises meetings and acts as a discussion forum for national authorities and other financial institutions. To this end, in the aftermath of the 1999 Asian Financial crisis a Financial Stability Forum was created. The Financial Stability Institute (1999) has begun to play a leading role in disseminating 'best practices' in risk management and financial sector supervision.

- **G20**

The G20 was created on 25 September 1999 by the G7 finance ministers. The aim was to establish an informal mechanism for dialogue among systemically important countries within the framework of the Bretton Woods institutional system.

Previously, international economic and monetary institutions and fora tended either to have quasi-universal membership, such as the IMF, or be clubs for rich countries, such as the G7<sup>12</sup>. The Asian and Russian crises of the late 1990s showed this was insufficient to prevent systemic difficulties in the international financial system or to find post-crisis solutions. The G20 is therefore a collection of large developed and transition countries<sup>13</sup> each with two representatives, usually the finance minister and the Governor of the Central Bank. The G20 is a forum for reviewing and studying members' policies with the aim of improving international financial stability. It has also served to reinforce the implementation of core banking standards drafted mainly by the major developed countries (G10) in the context of the BIS in Basel. The IMF also promotes the implementation of these standards.

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<sup>12</sup> Developing country organisations such as the G77 or UNCTAD had not tended to be significant players in international economic and monetary issues.

<sup>13</sup> Member countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, the United States and the European Union. The Managing Director of the IMF and the President of the World Bank, as well as the Chairpersons of the International Monetary and Financial Committee and Development Committee of the IMF and World Bank, participate fully in the discussions.

Although the EU, represented by the finance minister of the Member State holding the EU Presidency, is a formal G20 member, the effectiveness of the EU seat is limited by the six-monthly rotation of representative, particularly given that some EU Member States are not G20 members and so their finance ministers would not usually attend G20 meetings. This problem does not arise for the ECB, however.

- **Transatlantic Biotechnology Forum**

The TBF was, in the course of 2000, a striking experiment in multi-stakeholder non-governmental policy debate. It resulted in a remarkable consensus document on the challenges that biotechnology poses on both sides of the Atlantic. The TBF's recommendations are challenging both to EU and to US current practice: challenging EU regulators to avoid over-regulation and US administrators to avoid over-simplistic hype of a new technology which, irrespective of environmental and human health considerations, seems certain to pose problems of the balance of power between technology owners and users in several economic spheres.

The idea of a TBF was proposed by the Commission and endorsed by Presidents Prodi and Clinton at a bilateral summit. Despite this auspicious political birth, the idea was nearly stifled by the wet-nurses of officialdom on both sides of the Atlantic. It took a year to agree very general terms of reference, to agree not to draft a common set of questions for the Forum, and to agree a list of 20 eminent individuals, representing the scientific, business, academic, ethical, consumer and environmental communities on each side of the Atlantic. The group worked in a remarkably effective and unbureaucratic manner, producing a concise, readable and operational report, adopted by consensus, within 6 months of the mandate being given. Credit for this goes above all to the two chairmen, Professors Ruud Lubbers and Cutberto Garza.

The breadth of the consensus among such a diverse group of experts is striking and stands in stark contrast to the inability of established institutional channels across the Atlantic to produce anything but stand-off and mutual recrimination in this field. Despite, or perhaps because of, this contrast, the institutions of the EU and US have singularly failed to devote any attention to the Forum's recommendations. Neither side can claim the Forum's conclusions as a complete vindication of their positions, so neither side wants to look at them too closely. The departure from office of one of the two Presidents has inevitably complicated matters but it clearly remains an uphill struggle for the Forum's good ideas to take on real life at the political level. Despite this, the ability of non-governmental players to forge a consensus analysis of a difficult field suggests there is willingness on the part of busy people in civil society to serve their communities in this way, and suggests too that a somewhat readier, and more modest, acceptance of such assistance on the part of administrations could only help to advance policy change more effectively and more quickly.

- **The Intergovernmental Panel on Climate Change (IPCC)**

Recognising the problem of potential global climate change, in 1988 the World Meteorological Organisation (WMO) and the United Nations Environment Programme (UNEP) set up the Intergovernmental Panel on Climate Change (IPCC). It is open to all UNEP and WMO members and has attracted hundred of the best scientists from all over the world. The IPCC's role is to assess scientific, technical and socio-economic information relevant to understanding the risk of human-induced climate change. It does not carry out new research nor does it monitor climate related data. It bases its assessment mainly on published and peer reviewed scientific technical literature. The IPCC has three working groups:

Working Group I assesses the scientific aspects of the climate system and climate change.

Working Group II addresses the vulnerability of socio-economic and natural systems to climate change, negative and positive consequences of climate change, and options for adapting to it.

Working Group III assesses options for limiting greenhouse gas emissions and otherwise mitigating climate change.

The IPCC First Assessment Report (1990) was key in getting the UN General Assembly to set up the Intergovernmental Negotiating Committee for a UN Framework Convention on Climate Change (UNFCCC). The UNFCCC was adopted in 1992 and entered into force in 1994. It provides the overall policy framework for addressing the climate change issue. The IPCC continues to provide scientific, technical and socio-economic advice, in particular to the 170-plus Parties to the UNFCCC, through its periodic assessment reports on the state of knowledge of causes of climate change, its potential impacts and options for response strategies.

Its Third Assessment Report brings additional scientific evidence about climate change and its evolution. Composed of the best scientists from all over the world, the IPCC can set the example for open and transparent scientific reference systems for policy support.

Given the Bush Administration's volte face in rejection of Kyoto, the value of this experiment must now seem more valuable to the objective observer. But sound science in such a field as Climate Change, though indispensable is no substitute for domestic politics. The value of the IPCC remains intact, and the solidity of commitment to Kyoto is vindication enough of the scientists' work.

- **Data protection/Safe Harbour/FTC enforcement powers**

The system operates as follows. The US company adopts an internal data protection policy, according to the set of criteria recognised by the Commission; it also enters into an agreement with an independent body which will provide a Independent Dispute Resolution Mechanism; the Company communicates this policy to the public.

This communication to the public allows the FTC to act in case of breach ,on the basis of the Misrepresentation principle. In practice, the individual who alleges a breach will first use the IDR and the FTC will treat as priority the complaints introduced if the IDR failed to solve the problem. The FTC does not have the final word: it will take the company to the court and it is the court which will decide. It should also be noted that the system is not applicable to Financial Services. As of now, only 38 companies have used the system. The "safe harbour" mechanism is a useful step in the right direction towards a world-wide system of protection of personal data rather than a mushrooming of ad-hoc bilateral agreements.

- **Governance and multilateral initiatives in the competition field**

The globalisation of marketplaces and the internationalisation of business strategies present major challenges for competition authorities around the world and has highlighted the importance of seeking to ensure a maximum of convergence and coordination between the growing number of competition enforcement systems.

The main policy response available to competition authorities is to establish networks and cooperation instruments ensuring that the integration of markets leads to maintained competitive outcomes, thus making the globalisation process both economically more efficient and socially more acceptable. In the context of a better Governance beyond our borders, competition policy has an important role to play if we are to avoid currents against globalisation and a protectionist backlash.

In this respect, two multilateral initiatives in the competition field are worth mentioning. Firstly, the Working Group on the Interaction Between Trade and Competition Policy set up at the 1996 WTO Singapore Ministerial to analyse and discuss linkages between competition and international trade issues. Even though the Working Group is not a negotiating forum as such, a number of WTO members, including the EC, have presented detailed and concrete suggestions for possible elements of a WTO competition agreement. The second is the recent proposal to create a Global Competition Forum with the primary purpose of providing a place for discussion between those responsible for the development and management of competition policy worldwide in an attempt to forge as broad a worldwide consensus as possible. Both initiatives can be seen as contributing to the more general concept of governance.

Concerning future WTO negotiations on trade and competition, the Commission has taken into account certain views expressed by some in Seattle. The Commission believes in particular that negotiations should be realistic and focus initially on what can be achieved in the context of a short global round. The scope of such negotiations should therefore be limited to the issues which are ripe at this stage, e.g. the development of certain core principles such as non-discrimination and transparency to be included in domestic competition laws, as well as the establishment of flexible modalities for cooperation between competition authorities.

As regards more complex international competition issues, it is necessary to continue and develop efforts to deepen the educational and analytical work with the active participation of civil society. Such work could be undertaken in the framework of the Global Competition Forum. Moreover, developing countries and the contribution of sound competition laws and policies to sustained economic growth are now at the centre of this exercise. In its submission to the WTO Working Group Meeting in June 2000, the EC set out in detail the advantages of the future framework for developing countries (to accompany their economic and regulatory reforms and to enable them to deal with international anti-competitive practices which hamper their development). It also addressed their main concerns by recognising their need for flexibility and progressivity when putting a competition framework in place, and their need for reinforced and coordinated technical assistance to build the capacity necessary in order to participate meaningfully in international cooperation activities in the area of competition.

This openness regarding flexibility and progressivity coupled with targeted technical assistance is one of the new methods of governance which should be used in order to make sure that all partners are given the necessary means to implement their commitments. By adopting this realistic, constructive and flexible approach, the EC has demonstrated its openness to deliberations prior to the actual process of rule-making and appears as less of a threat to its partners. Also, the EC is then better placed to persuade them to recognise the lessons that the EC experience itself can show regarding the development of global governance.

The main objective of the Global Competition Forum is maximum of convergence/consensus between participants without actual rulemaking. The Forum could lead to the promulgation of general guidelines or the issuing of non-binding "best practice" recommendations, dissemination of experience and know-how, facilitation of international cooperation and development of a broad policy debate. Such a Forum should provide for a common platform where competition authorities of developed and developing countries from all parts of the world could meet on an equal footing. By offering Heads of competition agencies world-wide a high level event dedicated to the organisation of a structured dialogue, this forum could add practical value to the work of existing institutions. Even if this forum were mainly driven by competition authorities, it could cooperate closely with a number of strategic partners who could contribute to the debate (IGOs, industry and consumer associations, associations of the legal profession, academia etc.).

Depending on the topic under discussion, participation in the debate would be shaped along the lines of a variable geometry ensuring that particular points of view or focused interests are adequately represented and that different objectives and perspectives are better integrated. This flexibility and this openness are very much in line with the concept of governance which requires broader participation of all actors concerned in policy deliberations in order to help to provide a sounder basis for decision-making.

## ANNEX II

### **Commission Participants in Working Group 5**

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MADELIN Robert  
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## **External Participants in a Working Group seminar, held in March 2001**

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### **Mr Robert Howse**

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