

FROM ENLARGEMENT TO THE RULE OF LAW | TOWARDS A PAN- EUROPEAN COMMONWEALTH



Despite the fact that the economic crisis is seen to be monopolizing the efforts of the European leaders, the course of EU enlargement nonetheless is being kept: on July 1st 2013, Croatia will become the twenty-eighth member of the European Union (EU). As a result, we can expect candidate applications from the South-East European countries (the Western Balkans) and the sui generis case of Turkey. The historical mission of the EU in its neighbourhood and on its borders must not however, overshadow the shaded areas of the enlargement. Indeed, the rule of law and justice are sometimes exploited for political purposes as evidenced by trials implicating the former Romanian, Hungarian and Croatian premiers – trials not always conducted in accordance with European legal norms. Consequently, the support of public opinion is slipping away and the European project is overcome by extreme weariness. Therefore, could a hurried enlargement to the Western Balkans feed the current pessimism, creating potential negative aftershocks? The course for EU enlargement must be kept without losing sight of the purpose of the project: a Pan-European Commonwealth based on a common idea of law and justice. Respect for the rule of law must therefore be placed at the heart of the enlargement process. The extension of such a commonwealth of free republics needs to be a work of peace and civilization.

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"There is a true law, a right reason, conformable,
universal, unchangeable, eternal, whose commands urge
us to duty, and whose prohibitions restrain us from evil."

Cicero, *De Republica*

The Eurozone crisis, the economic stagnation and the potential decay of the "constitutional arc" in the most exposed countries, due in part to the incompetence of governing political parties and increasing aggressive political rhetoric, are monopolizing the efforts of the European leaders and the attention of the media. In spite of this, the course for EU enlargement is, nonetheless, being maintained. As a result, on July 1st 2013, Croatia will become the twenty-eighth member of the European Union (EU). Beyond this, the former Yugoslav republics, known as the Adriatic outlet for Central Europe, loom as candidate countries from South-East Europe (the Western Balkans), with Turkey a *sui generis* example. The prospect of full inclusion in the EU seems to be the only incentive powerful enough to achieve the long-awaited political and economic reforms needed to transform these long disadvantaged countries. The depravity comes as a result of, firstly, the Ottoman conquest, followed by imperial rivalries and conflicts, and finally communism. The "new Balkan wars" of the 1990's highlighted the importance and high stake of the security within these areas.

If the EU has the inclination to include within its territory, countries that are situated to the east and south-east of its current borders, then this historical moment must not overshadow a very significant phenomenon fraught with consequences: the extreme weariness for the European project. In this sense, it is more comparable to a "depression" (like phase B of a Kondratiev cycle) than a *stricto sensu* crisis, the phenomenon results in the lethargy of the population. According to overwhelming public opinion, "Europe" is seen to lack sense, in both significance and direction. In reality, the signs of this "extreme fatigue" were identified well before the emergence of the current economic crisis, with the very term 'Euro-scepticism' appearing more than twenty years ago, simultaneous to the negotiations of the Maastricht treaty. Subsequently, the grey areas of enlargement - in terms of rule of law, impartial justice and respect of rights - which include both newcomers and those in the EU accession process of accession, have contributed to these pessimistic representations. Indeed, there are various examples depicting the lack of respect for the law and the manipulation of justice which expose the similitudes with the practices of patrimonial systems in Eastern Europe (such as Ukraine and other countries from the former USSR).

Consequently, a hurried enlargement to include the Western Balkans would aggravate the suggestion that a country can nominally belong to the EU while still possessing qualities that are contrary to the rule of law, contributing further to the current pessimism surrounding the virtues of the process. The potential aftershocks of a badly conducted enlargement must therefore be pre-empted and prevented. Without doubt, lessons from the "big-bang" of 2004-2007 - when the EU increased from 15 to 27 members - have been partially learned. The European Commission amended the membership strategy so that the majority of the reforms required for membership had to be implemented within a certain timeframe. In the case of Croatia, the reform process will have been conducted rigorously and seriously. However, the undertaking that has to be implemented is very demanding. Therefore, progress must be maintained and the will to realise the EU mission across its borders must exclude excessive haste. The reinforcement and the extension of the European and Western model, as far as law and rights are concerned, are the main stakes. The overall purpose is the extension and consolidation of a Pan-European Commonwealth united by a common idea of law and justice. Putting the rule of law at the heart of the enlargement as an ideal of civilization, encompasses and surpasses the practical dimensions of the European project. It is a long-term process which must be thought out and maintained over time.

1 | A critical defence for the enlargement of the EU

| The enlargement as an answer to the challenges of a post-Cold War era

Undoubtedly, the double undertaking of strengthening the cooperation within the EU whilst attracting countries from central and Eastern Europe ever since the end of the cold-war will have been disconcerting to those in Western Europe. Within the preponderance of public opinion, is the perception that the enlargement is a process devoid of any sense which is emptying the European project of substance: it would impede the deepening of the cooperation between member states, and is at risk of diluting and even dislocating it. Thus, could the future of the EU, at short or medium term, validate the logic that extension and comprehension are currently evolving in opposite directions. In return, we see an affirmation of nostalgia for a Europe that is strengthened in terms of geography which is presumed to be more coherent and efficient.

One should however refrain from reconstructions *a posteriori*. The "Europe of Six" which took shape via the ECSC (1950) then the EEC (1957) only had limited impact. Without a doubt, the "Salon de l'Horloge" (Clock Room) speech by Robert Schuman and the objective of a "European Federation", based on the Franco-German reconciliation, did not lack ambition. However, the failure of the European Defence Community (EDC) ruined the federal perspective (1). The objective of the Rome Treaty was more modest: a simple common market. This Europe with a limited geographic scope did not succeed in acquiring a political and military profile (cf. the failure of the Fouchet plan). De Gaulle's veto of the entry of the United Kingdom then the "empty chair policy" prevented the working of the EEC for several months. *In fine*, this Europe of the Six was in no way a model of efficiency.

In the following years, the European project grew in importance. The common market was set up, the monetary system was created and the EEC enlarged (Europe of the Twelve) but there was no real political dynamic. While Gorbachevism conveyed the seriousness of the contradictions which undermined the USSR, the Single Act (1986) aimed solely at improving the common market (the "Great Market"). It was geopolitical change that prompted higher ambitions from the West European states. The Maastricht treaty aimed at establishing a West European centre to stop the Central and Eastern European Countries (CEECs) and to stabilize Great Europe: it was a question of internal strengthening in order to enlarge.

| The enlargement is not the cause of the European difficulties

Undoubtedly, the increase in the number of EU member states creates a challenge at the institutional level. One can also consider that enlargement to the East changed the nature of the European project but how could the constructivist plan of a "Power-Europe", thought of as a supra-national state, have won against the logics of position? In reality, the increase in the EU's power is above all obstructed by disagreements and power rivalries between the great Western European states. Indeed, post-war Europe was based on a balance of imbalances between France, West Germany and the United Kingdom. The end of the Cold War ended this geopolitical status quo, and therefore created the need for a new working theory. Paris, London and Berlin looked for equilibrium in their mutual relations as well as within the Euro-Atlantic bodies. It is from this viewpoint that we must understand the weakening of the Franco-German relationship, a phenomenon which is even more worrying for the EU than the positioning of Poland or other CEECs.

For that matter, The Eurozone crisis and the deep economic difficulties have since taken precedence over the discussions relating to a Power-Europe. It therefore, seems that the countries concerned – in terms of deficits, public debts and sovereign risks – are not the CEECs, as the great majority of them are not in the Eurozone. The countries at the epicentre of said crisis have been in the EU for 25 to 30 years (Greece, Spain, and Portugal), even longer (Ireland) and some founders members (Italy). The incapacity or lack of political will on the part of countries having adopted the Euro to form an optimal monetary zone is the responsibility of governments and the majorities supporting them (2). As a result of this crisis, the line dividing East-West became nominal and the Northern Europe/Southern Europe division took over. The

profile differences on the macro-economic level (budgets, levels of borrowing and external accounts) surpassed the profound discrepancies between the productive systems.

In fine, the public finances crisis affecting longstanding members of the EU refers back to the "fundamentals" of their political and economic systems. The strong development of the state sector against a background of Keynesian consensus resulted both in legislative inflation and an increase in public spending. In addition, the high growth of the 1950 to 1973 period and a youthful population made it possible to fund a welfare state. In spite of the economic slowdown in the 1970's, a lack of foresight regarding the consequences of the social system and the workings of the political environment (the exchange of spending promises for votes) together with their will to maintain the global level of spending, public debt made it possible to delay the repayments. Since then, with an ageing demographic, the weight of public bureaucracies and huge levies, Europe's potential growth rate has reduced even more. This issue is that of the West European "social democracies" and social-tax problems. Such structural rigidities are not found in the CEECs, some of these countries are even forming growth relays.

| Rule of law, justice and rights: the shaded zones of the enlargement

The transition of the CEECs towards a market economy and the great progress some of these countries have made must not overshadow the shaded zones of the enlargement. The Copenhagen Criteria overseeing the enlargement processes envisages, in addition to the transition to a market economy, the consolidation of liberal democratic institutions (multi-party system and free elections, rule of law and fundamental rights). If this overall condition were to be met universally, various cases of companies and foreign investors involved in disputes with national entities should expose infringements of the law and the impartiality of justice. They are the consequence of forms of "crony capitalism" combining statism, public-private sector complicities and corruption. Poorly privatized and still partly under state control, the Slovenian economy for example, is affected by these ills. Successive governments have designated friends of the ruling party as managers of local banks and national champions – a phenomenon encompassing nepotism, clientelism and questionable accounting. Such practices can be found in other CEECs.

The political battles and the rivalries between "powerful men" also result in the manipulation of justice and lack of respect for the rule of law. In the summer of 2012, the political crisis in Romania and its developments (dismissal of the President of the Republic, reduction of the constitutional tribunal attributions and the dismissal of the presidents of the Chamber of Deputies and the Senate) attracted the attention of European authorities. In Hungary, the present political majority (in place since 2010) maintains sometimes challenging relations with the European Commission. Some aspects of the reforms initiated, like the Media Act, are not always aligned with EU norms (3). Another example is the adoption in March 2013 of a series of constitutional amendments by the Hungarian parliament which could result in fresh turmoil. Joining the EU at the same time as Romania, Bulgaria is for its part, very unstable. Successive political crises have revealed endemic corruption and the deterioration of the rule of law. Overall, it explains the fact that Sofia, no more than Bucharest, will only be given the right to enter the Schengen zone when the Commission as well as the European Parliament believe the two capitals have fulfilled their obligations (4).

Finally, the political rivalries and the post-electoral settling of scores have resulted in strong pressures on the legal system as well as the instrumentalisation of the courts. Significantly, three former Prime Ministers of the region - Adrian Năstase in Romania, Ferenc Gyurcsány in Hungary and Ivo Sanader in Croatia – are today in conflict with the law, due to matters of corruption. Beyond the facts, the ways of proceeding throw suspicion upon their true motivations. It is obvious that these matters are not always investigated in a spirit that is in accordance with the rule of law, the defendant's rights and European norms. Even though the countries concerned have adopted pluralist and competitive systems, the traditions and political practices are reminiscent of those which of the patrimonial authoritarian regime of the former USSR. We consider here what the imprisonment of the former Prime Minister Yulia Tymoshenko reveals about the Ukrainian political system since 2010 as well as the "signs" sent by the new Georgian government.

2 | The EU membership strategy and the entry of Croatia

| The feedback from of a hurried enlargement

The enlargement of the EU to include Bulgaria and Romania, two years after the "Big Bang" of 2004, was objectively hastened. We must however remember the geopolitical context at the end of the 1990s and beginning of the 2000s to fully understand the context. The decision to accelerate the integration of the CEECs into the Euro-Atlantic bodies, i.e. NATO and the EU, has its origins in the disintegration of the former Yugoslavia and the threats of destabilization posed by the entire Balkan peninsula, with possible aftershocks impacting Central Europe. The terrorist attacks of September 11th, 2001 and the will to accelerate geopolitical reclassifications also played a role in favour of a vast and rapid enlargement. Although they effectively joined NATO as early as 2004, unlike the other CEECs, Bulgaria and Romania had to wait for some time to integrate into the EU. When the decision was taken, it was perceived as a natural and logical extension of the previous wave.

In retrospect, there are many who consider that, in view of the lack of preparedness of these two countries, this decision should have been postponed. On the other hand it can be perceived that the window of opportunity for the enlargement of the EU as well as NATO should have been exploited. The confluence of geopolitical conditions took precedence over the institutional and legal considerations, as long as the Copenhagen criteria, overall, were respected. Meanwhile, Russia was political hardening under leaders who had not given up dominating their "near abroad", with all its consequences in Eastern Europe. Although the entry of Ukraine and Georgia in the Euro-Atlantic bodies seemed to be a question of mutual will and confidence in the transformative power of the enlargement process, the Russo-Georgian war in August 2008 and its repercussions in Ukraine set another course. If Romania and Bulgaria, even all the CEECs, had remained in an improbable "intervening period", the present situation at the heart of Europe would be far more uncertain.

It is nevertheless true that the haste of the latest enlargement has resulted in a relative lack of preparedness on the part of the joining countries, especially on the matter of legal reforms as well as the fight against organized crime and corruption. As a result, the EU had to set up a "cooperation and verification mechanism" (CVM) in order to encourage progress in these areas. The Commission gives technical assistance to the two Member States it is evaluating, sends expert missions and transmits the information to the European Parliament and the Council for which it draws up a half-yearly report. Evidently, the transition of Bulgaria and Romania is not finished, as the successive reports of the Commission always maintain the flaws initially discovered (political instrumentalisation of justice, corruption and organized crime) (5). The difficulties encountered therefore led the European authorities to increase requirements and modify the existing procedures to negotiate and rigorously prepare Croatia for EU membership.

| The membership of Croatia and the progress to be made

In fact, the number of chapters which make up the '*acquis communautaire*', i.e. the totality of the body of law that a country joining the EU must insert into its domestic legislation, has been increased (35 chapters instead of 31). The opening and closing criteria of said chapters are increased and they were reinforced (25 opening criteria; 104 closing criteria). The Commission is particularly firm on certain aspects of the negotiation, especially chapters 23 ("judiciary and fundamental rights") and 24 ("Justice, liberty and safety"). Further to a Franco-German initiative a "specific follow-up mechanism" has been created. This measure enables the Commission to assess, chapter per chapter, the results of the commitments taken during the membership negotiations and refer the country to the Council. In addition, the entry into the Schengen zone is subject to specific terms. The continuation of this "follow-up mechanism" is envisaged beyond July 1st 2013, which would not be a sign of complete success for the Commission as well as for Croatia.

The Croatian membership negotiations were closed in June 2011 and the Commission gave a positive opinion. Next, the European Parliament gave its approval, and then the Council decided to open the EU to Croatia. Signed on December 9th 2011, the membership treaty is being ratified by the national parliaments (in mid- March 2013, 22 out of the 27 Member States had ratified it). However, in spite of the real progress that has been made in the membership procedure, there is no resting on laurels. The Commission's report of October 10th 2012 clearly stipulates that Croatia's alignment with the community's body of law is almost finished but also identifies the areas in which additional efforts must be made to fully respect its commitments (6). Unsurprisingly, the ten actions recommended by the Commission relate to chapters 23 and 24 as well as chapter 8 on "competition policy" (the privatization and restructuring of naval yards are at stake). Therefore the next report from the Commission on Croatia should be read carefully (spring 2013).

Already mentioned, the trial of Ivo Sanader, Croatia's prime minister between 2003 and 2009, highlights the divergence between the European norms on the one hand and the practices of Croatian justice on the other hand. Arrested and jailed for corruption, Ivo Sanader is accused of having received money from the Hungarian energy firm MOL as well as from Austrian and German banks associated in an EPO project (7). Pronounced in November 2012, Ivo Sanader's sentence was presented as a showcase of the progress Croatia was making in its fight against corruption. However, in a trial marred by procedural violations, the opposite proved true. The court seems to have taken an arbitrary approach to evidence admitted to the case. Expert reports from the likes of multinational auditing firm KPMG were dismissed because they were "contrary to other evidence". Also ignored was the 1,000 page investigation pursued by the Hungarian public prosecutors. Moreover, the judge's conclusions were mostly focused on condemning the political decision of giving over the management control of the already privatized national energy champion by Sanader and its sale to a foreign competitor, rather than on providing sound proof of the alleged bribery.

This judgment clearly echoed the general sentiments of Croatia's elites that the privatization of their energy company, though mandated by the European Commission ahead of Accession, should have never taken place. The important issue is eventually not to know if PM Sanader is guilty or innocent, but to look at how he was condemned. Unfortunately, the legal procedure shows that the Croatian judicial system is still far from being completely independent, professional and up to European standards and norms of rule of law. This example is particularly worrisome: if such a flagship lawsuit, under huge scrutiny of the European institutions, can be conducted in such a way, what is happening for the thousands of other cases involving ordinary Croatian citizens, companies or foreign investors?

| Towards the Balkans: staying on course and keeping to the level of requirements

A fortiori, the possible enlargement of the EU to the South-eastern European countries (Western Balkans) will require more determination to attain the objectives and maintain patience during the process. It should be remembered that the "Europeanness" of the states in the region was fully recognized at the EU-Western Balkans Summit organized at Thessalonica on June 21st 2003 after a European Council held under the Greek presidency. In the declaration adopted, the EU reaffirmed "its unequivocal support for the European perspective which is offered to the Western Balkans countries" and it clearly stated that "the future of the Balkans is within the European Union". This declaration comes within the scope of the extension of the Stability Pact for South-Eastern Europe (Sarajevo Summit, July 29th-30th 1999), constructed in the wake of the Kosovo war, which already envisaged the entry of these countries into the EU. The reference to "South-Eastern Europe" rather than the "Western Balkans" had a political and symbolic impact.

The initial idea is to use the European and Atlantic perspective as a lever for democratization, modernization and pacification in this tormented region. The countries involved entered a process of negotiations leading to the signing of Stabilization and Association agreements, allowing them to become possible candidates to the EU. Most of these agreements were signed in the 2000's and the signatories are now recognized as candidate countries for entry in the EU. In 2012, the EU and the Former Yugoslav Republic of Macedonia (FYRM) opened a "high level dialogue" about its membership. Although Serbia and Montenegro signed their own Stabilization and Association agreements with the EU later than their neighbours (2010), they also have the status of candidate countries and the membership negotiations between Brussels and Podgorica are

open (2012). On the Eastern borders of South-Eastern Europe lies Turkey, another candidate country with an influential presence in the Balkan area (8).

If the process which takes the countries in the region from the signature of a Stabilization and Association agreement to the status of candidate country is clearly defined, with Croatia opening up the way it will be important not to let an automatic process take hold, under the pretext of inevitability. In fact, the respect for the rule of law is a lot more problematic than covered by the previous cases and it is known that the transformative power of the EU's borders does not only rest on the virtues of previous examples. The feedback from Croatia's accession must be integrated in the enlargement strategy conducted by the Commission, the latter being called upon to enhance its objectives, reinforce its criteria and ensure with even more care that the candidate countries abide by them; haste must not compromise the overall objective of the enlargement of the EU. Finally, let us remember the special case of Kosovo, whose independence is not recognized by everyone including some EU members. Here again, the sense of the duration, the diplomatic tact and the clear vision of the Pan-European stakes are required.

3 | For an ambitious Pan-European Commonwealth

| Without sacrificing Greater Europe to the Eurozone

The importance of Pan-European stakes must be highlighted as the Eurozone crisis tends to eclipse them. The answers given are sometimes presented as being a long route towards a political "hard core" bringing together the seventeen states sharing their monetary sovereignty. Eventually, the efforts produced to compensate the fact that the Seventeen do not constitute an "optimal monetary zone" would lead to the organization of a federalized sub-group inside the EU. The Eurozone would become the driving force of the EU and could pose as a new global player. Apart from the fact that such a vision resembles inevitability; they imply a certain lack of interest for the EU and its enlargement, which at best is treated with a "soft carefree attitude".

It is in fact unlikely that the Eurozone will develop a common will, i.e. a political unit. Of course, the coordination of the budget policies is necessary for the reinforcement of the Euro, especially for the world economic balance, but all that does constitute political intention. It was by necessity, with improvisation and without common representation that the future of the Eurozone was organized, through tactical games of alliances and counter alliances which reveal the poor coherence of this monetary bloc. The idea that an incremental process would take us towards a form of political union, without shared and explicit will, is wishful thinking.

The Eurozone is not at the "Ciceronian moment" (9), this balancing point between two political forms (the city-state and the Empire). It is even to be feared that a mental confinement in the Eurozone would threaten its existence as the points of symmetry between the nations need to be identified within a wider space. How can we think about Europe whilst disregarding the players who do not fit the previously described plan? Would we be able to maintain capacities of military action in Europe and a determined opening towards the wider world by considering the United Kingdom a negligible quantity? Should we lessen the importance of Poland, this country which as we know has an influence in Eastern Europe and its role in the "Eastern partnership" of the EU? The future and the destiny of the countries making up the Eurozone cannot be thought of independently from Greater Europe.

| The stakes of an enlargement respectful of the law

We must therefore insist on the fact that the attention given to the rule of law and respect for the law in the enlargement process of the EU are not delaying tactics aiming at postponing *sine die* the entry of candidate countries after Croatia. The enlargement overlaps multiple stakes, with safety in the first instance. The

disintegration of former Yugoslavia in the 1990s showed that peace is not granted but created. It supposes the capacity to resort to weapons in order to set up a new course of action, the politico-military commitment having then to be extended by a civil commitment (reconstruction and development). The two pillars for a "single and free Europe" represented by the EU and NATO contribute to the production of this "collective asset" which is peace in a historically war-fomenting region. The new order of things is based on the values around which the Western political systems are organized, bringing us back to the rule of law and the respect for the law.

On a more practical level, the stakes are also related to energy, the countries of South-eastern Europe make up the route of different pipeline projects joining Europe to the Caspian Basin on the one hand (the Nabucco-West and its competitors) and to the Russian port of Novorossiisk, on the Black Sea on the other part (the South Stream project, great rival of the Nabucco and the "southern corridor" towards the Caspian Sea). Thus different countries in the region are actively called upon by Gazprom and the Russian Federation to join the South Stream project, hampering the diversification of Europe's energy supplies. It is with this perspective that the EU, represented by the Commission, signed with eleven countries from Central and Eastern Europe including Moldova, as well as Turkey, a treaty creating the Energy Community of South-East Europe (Treaty of Athens, 2005). This treaty covers the electricity and gas sectors, the signatory countries undertaking to abide by the European energy legislation with a view to creating an integrated market. The normative power of the EU and its enlargement is moving in the direction of a Greater Europe united by energy.

Finally, the stakes of enlargement are of an economic nature. The extension of the "great market" is giving the EU the necessary depth for the new global age. The formation of a great market makes it possible to bring into play the benefits conferred by the division of work and to increase the growth potential over much greater spaces. If growth is not present, it can be explained by the rigidity of certain economies, the imbalances of public finances and the persistence of obstacles to the free circulation of the productive factors. Besides the structural reforms that the situation implies, the organization of such a market requires the greater normative power of the EU. It is the rule of law and the respect of the law, not to be mistaken for statutory inflation, that will strengthen this market with a Pan-European scope, as it will favour the Schumpeterian dynamic (protection of intellectual property rights) and, by reducing the "grey areas", will reinforce the feeling of belonging to a same community by right (the European project implies a certain *affectio societatis*).

| The rule of law and the ideal of justice at the heart of the European idea

The arguments of a practical and utilitarian order in favour of strong rules on good behaviour will not be sufficient. Ultimately, placing rule of law and respect for the law at the centre of the EU enlargement processes is a question of political and moral philosophy. The Western constitutional-pluralist systems, commonly designated as "liberal democracies", do not solely rest on the law of number alone, the latter only ever being a variation of the law of the strongest. These mixed systems combine universal suffrage, the separation of powers and the respect of fundamental rights. The expression of rule of law assumes this Western political form but one could well prefer the ideals of the "respect of the law" (10). The idea, according to which the political power cannot be the supreme power and that there is a law that precedes and is superior to the state with roots that plunge into Greek antiquity (isonomy and nomocracy) and the world of the Bible (Man made in God's image).

If the Greek legislators and philosophers discovered the ideal of the "government of the law", it was the Roman magistrates and legal experts who developed the legal science and codified the law in the sense of universality. In the great cosmopolitan and poly-ethnic state of imperial Rome, the "law of the people" gradually replaced the native law, impenetrable to the populations incorporated in the empire (11). To make these men that have descended from different "patrilineal clans" live in harmony, the legal experts are looking for the source of the law in objective human nature. Roman law was founded on the principles of "natural law", i.e. on the moral code implanted in every rational being. Cicero and the great Roman jurists prefigure the theories of the modern natural law and the "rule of law" (12) from John Locke on which rest our political-legal systems and rules of good behaviour. The parallel between Rome as a cosmopolitical state and the Pan-European Commonwealth is self-evident.

The European and Western model presented by the EU is therefore the result of a political civilization which rests on a tripartite heritage: Athens, Rome and Jerusalem (cf. Paul Valéry). In spite of the involution of Western nomocracies (a phenomenon linked to the social-fiscalism as well as the subjectivism) and the transformation of the notion of law, the latter cannot be reduced to a simple instrument of governmental action. There is a substantial link between the law, the rule of law and justice. Together with prudence, strength and temperance, justice is one of the four cardinal virtues. For both Aristotle and Plato, it is even the superior virtue, that which crowns and encompasses the others. Although the external forms of the rule of law cannot compensate for the lack of virtue, the ideal of universal justice however constitutes the keystone of the Western political systems and the model that the EU and its member states are trying to diffuse in their hinterland and on their geographical borders.

4 | Rule of law and *Pax Europae*

In conclusion, placing the rule of law at the heart of the European project is of foremost importance for peace, security and prosperity in Europe. This "great idea" resonates with the Project of Perpetual Peace by Emmanuel Kant, a work more often quoted than read and sometimes distorted (it is not merely babelism). The purpose of this project is the realization of the idea of peace between the European states, with one of the prior conditions being the existence of a "republican civil constitution" in each one of them. By this expression, we should understand a form of government based on the freedom of the members, the law and the separation of powers, everything corresponding to the right of the law. Kant adds a "permanent alliance" (a *foedus pacificum*) protecting from war and a "cosmopolitical right" (right of visit and free movement).

The EU's institutions, democratic norms and legal weight give a concrete translation to the confederation of free republics theorized by Kant. A Pan-European Commonwealth bringing together sovereign states, goes beyond a simple space of free-trade and constitutes a Community of law between its members. Thus, the recourse to variable geometry which applies for some of the common policies implemented within the framework of the EU evidently does not concern the norms and rules of good behaviour which belong to the common law circle, for its members as well as for the candidate countries. The extension of the right of the law is a work of peace and civilization which grants all its significance to the European project.

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| Notes

- (1) On August 30th 1954, the French deputies refused to examine the treaty on the EDC although ratified by the other countries of the ECSC.
- (2) The CEECs were affected by the economic difficulties but the aid plans were directly implemented by the IMF, outside the mechanisms of the Euro zone (European mechanism of financial stability and the European Fund of financial stability). They do not constitute a systematic risk for the Euro Zone and, more widely, the EU.
- (3) In February 2011, the Hungarian government agreed to modify various sections of the Media Act in order to conform with the European Charter of fundamental rights.
- (4) The fear of new emigration flows also explains the hostility of certain countries to the entry of Romania and Bulgaria in the Schengen zone (Germany and the Netherlands especially). Facing a possible veto, at the interior ministers' meeting of March 7th 2013, Bucharest and Sofia postponed their request for membership. Berlin explained its position by putting forward as a reason the general corruption that also affects the administration in charge of borders. The question will be reviewed next December. If real progress is still expected, the internal political agenda of the hostile countries should not however win over the objective criteria for entering the Schengen zone.
- (5) The report from the Commission about Romania dated July 18th 2012 considers that "the recent measures taken by the Romanian government raise serious worries as to the respect of the fundamental principles [of the EU]" and underlines that the changes implemented since 2007 were made under pressure from the outside. Published on the same day, the report on Bulgaria principally underlines the persistence of organized crime and weaknesses in the application of the laws.
- (6) See the "Communication from the Commission to the European Parliament and the Council", Brussels, October 10th 2012. See also the communication from the Commission, published on the same date, about "the strategy of enlargement and the main challenges 2012-2013" (on www.ec.europa.eu).
- (7) About the judge's conclusions, see <http://www.globalsecurity.org/military/library/report/2012/2012-11-20-sanader-verdict.htm>.
- (8) This study does not mention the case of Iceland, a country with which membership negotiations have been opened since 2010.
- (9) Pierre Manent, *Le regard politique* [The political look], Flammarion, 2010, pp. 154-160.
- (10) The rule of law is not a "State that makes the law", this leading a form of legal positivism without any reference to a set of norms superior to the laws.
- (11) Philippe Nemo, *Qu'est-ce que l'Occident ?* [What is the West?], PUF, 2004, pp. 23-34.
- (12) The expression is the translation of the Latin "imperium lega". It appears in the 17th century.