

The EU Environmental Cooperation with Developing Countries

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1. Introduction

The study of the environmental cooperation in the EU is justified because it is a basic pillar in the legitimacy of the integration process. As it is known, the legitimacy of the Union moves between two models:

1. The first model argues that the legitimacy of the EU must arise from the only way known to the States, that is to say the constitutional one. The genesis of power and its exercise must be compatible with democratic standards and

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right's guarantee of the Member States. The power is made legitimate today as it has been since the genesis of contemporary democracies. This model has found its turning point with the rise and collapse of the European Constitution. The Treaty of Lisbon denies, at least momentarily, the Union constitutional legitimacy.

2. The second model suggests that the justification to legitimize the transfer of competences to the EU must come from its ability to solve problems that Member States fail to. Social contract theory contends that States emerge from popular sovereignty. People willingly consent to the State's authority, insofar as the State's objective is to solve or to help solving citizen's basic problems. Here, the connection with our topic is clear: the environmental problem impacts and affects the Member States citizens' quality of life and, at the same time, States are unable to solve the problem by themselves.

There are scientific evidences that global warming is related to things such as the CO₂ emission by the NASA -main pollutant in the most polluting country- or the deforestation of the Amazon Rainforest, known as the planet's lung. In this context, even the most powerful State is powerless.

It is undeniable that the Union is in a better position than its members to solve the environmental problems, and not only because the Union is *ad intra* more powerful than its States, but also because environmental issues have to be resolved globally.

Taking as a starting point this second model of legitimacy, we can make two assertions that will be developed in this paper:

Firstly, the Union is better placed than the most powerful of its Member States to tackle environmental problems. The transboundary nature of these issues legitimizes the EU power form. Given the current crisis in democratic legitimacy of EU, the European leaders need to emphasize on the second model of legitimacy, the only one that recognizes the effectiveness of the EU for solving citizens' problems. The first part of this paper will address this question.

Secondly, the interconnection and interdependence of the States in the resolution of the environmental problems makes the EU dependent on other States. This dependence demands collaboration. This collaboration cannot rely on preventive wars or on force –because it would mean going against its own values and would be useless¹- but only on bilateral and multilateral dialogues. And these dialogues, taking into account that they involve developing States, cannot find a better method than cooperation. Therefore, in order to improve their citizens' welfare, the EU needs to become a global player in the environmental field. And the best instrument known in that field is environmental cooperation. The following parts of this paper will focus on this aspect.

2. The double legitimacy of the integration process. Democracy versus effectiveness

2.1 Effectiveness: the legitimacy system of the EU

Neunreither speaks of two legitimacy levels in the Union, or rather of two sources with different legitimacy intensity: the direct one and the derived one². The European Parliament (EP) is an example of direct legitimacy whereas National Parliaments and other institutions are examples of derived legitimacy³. The qualitative distinction between these two spaces does not result from the author's aprioristic knowledge of national political spaces in comparison with the European one. It rather comes from the different value that citizens give to these different parliaments.

According to Neunreither, while Member States' citizens appreciate their national parliaments - and therefore, these gain legitimacy - the institutional

¹See for instance the philosophy of Commissioner Joseph Borg. Tatiana Couto, "International Cooperation and Environmental Security: The worldview of Joseph Borg", *EUI Working Papers, RSCAS 2007/12*, p. 7 ff.

² See "The dual legitimacy of the European Union and the democratic deficit", in Neunreither, K.: "The democratic deficit of the European Union: Towards closer cooperation between the European Parliament and the National Parliaments", *Government and Opposition*, vol. 29, n° 3, 1994, p.311-314.

³ In detail Martínez Sierra, J.M.: *La recepción constitucional del Derecho comunitario*, Valencia, Tirant Monografías, 2007.

system of the Community, even if it is based on democratic principles, is very far from being considered fully legitimate. For the latter to achieve a greater legitimacy level, there must be identification between citizens and the European political system. It is currently not the case⁴.

To understand this identification process, the distinction between formal legitimacy and social legitimacy in the Union must be clarified⁵. The social legitimacy means that citizens feel part of the political entity in which political decisions are taken. We do not need to go to Eurobarometer, nor to the causes of the crisis surrounding the constitutional treaty, to say that people in Europe identify themselves more with their nations or regions than with the EU as a whole⁶. Therefore, although the formal legitimacy shows two parliament levels as a single source, social legitimacy indicates a conscious discrimination at the expense of the EP.

This leads us to assert that the legitimacy force of the EU is not so much in the identification with the political system as in the perception of legitimacy or legitimation.

The distinction between “legitimacy of origin” and “legitimacy of operation” can bring some light to discern the perception of legitimacy. Regardless of the strength of the thesis which defends the genesis of the Communities as the endpoint of the confrontational Europe (“legitimacy of origin”), EC arises and remains for a reason of efficiency and effectiveness⁷.

⁴ Neunreither, K. says: “But if it can be maintained that the Community institutional system is based on democratic principles, we can still ask whether this implies full legitimation. Legitimacy also depends on the consent of the citizen, not necessarily on individual political decisions taken, but on the system itself. There must exist some kind of identification between the citizen and the political system”, in his work: “The democratic deficit of the European Union: Towards closer cooperation between the European Parliament and the National Parliaments”, *cit.*, p. 312.

⁵ Weiler, J.H.H.: “Parlement européen, intégration européenne et légitimité” en Louis, J-V. y Waelbroeck, D.: *Le Parlement européen dans l'évolution institutionnelle*, Bryges-Editions de l'Université de Bruxelles, 1988.

⁶ About the regional reality and the EU, see: “La Europa de las Regiones”, *Boletín de Derecho de las Comunidades Europeas*, Cortes Generales, nº 5. Spain. 1990.

⁷ The economic vision of the integration process is well grounded in modern historiography. As example, see: MacWilliams, W.C. y Piotroski, H.: *The world since 1945: a history of*

The effectiveness of the EU, in front of small States struggling to solve big problems, is, like it or not, the main legitimacy source of the European integration process. Actually, some authors have already considered the relationship between effectiveness and the increasing supranational authority of the EU⁸.

Therefore, the legitimacy of exercise of the EU comes from its dedication and greater effectiveness in the field of jurisdiction where Member States are overtaken by the globalization processes.

Eivind Smith argues that "the issue should be formulated as follows: most of the States in Europe are too small to cope with the anarchy of internationalized capital movements, or to ensure the vital needs of the environment and so on" ⁹.

2.2 The European Constitution: a failed attempt to legitimize the EU

With the Member States signing, on October 24, 2004, the "Treaty which establishes a Constitution for Europe", and with the beginning of the ratification process of the text in each State, the EU started its main attempt to constitutionally legitimize the European integration process¹⁰.

Although there was evidence that the so-called European constitutional treaty was more an international treaty than a Constitution¹¹, both from a substantial

international relations, Linne Reiner Publisher (Boulder)-Adamantine Press Limited (London), 1993, espec. "The new economic superpowers", p. 119 ff.

⁸ Andersen, S.S. y Eliassen, K.A.: "Introduction: Dilemas, Contradictions and the future of the European Democracy", en Andersen, S.S. y Eliassen, K.A. (Ed.): *The EU: How democratic is it?*, SAGE Publications, 1996, p.7.

⁹Smith, E.: "Introduction: Sovereignty-National and Popular", in Smith, E.: *National Parliaments as cornerstone in European Integration*, Kluwer Law International, 1996, p.11.

¹⁰ See Martínez Sierra, J.M.: "La Constitución Europea ¿Qué papel cumple en este momento? Una lectura crítica", *Documentación Social*, nº 134, 2004; Martínez Sierra J.M., "La Carta de Derechos Fundamentales", en AA.VV. *La Constitución destituyente de Europa*, Libros de la Catarata, 2005.

¹¹ See Noguera, A.: "¿Por qué una Constitución en Europa? Vacuidades y falsedades sobre el carácter constituyente del Tratado Constitucional Europeo" in *Directo e democracia, Revista de Ciencias Jurídicas*, Vol. 8. N.1. ULBRA. Brasil. 2007. p.4-31.

and a procedural point of view (criticized for the way it was designed and the way it was adopted), the European economic and political elites insisted in calling it *Constitution*. These constituents' longings responded not to a legal characterization of the text but to a strategic necessity of legitimacy of the European integration process. Unlike other legal norms, what characterizes a Constitution is the democratic legitimacy, not legality. The democratic legitimacy is the main characteristic of any Constitution

However, after the failure of the *referenda*, and with them of the European constitution, on December 13, 2007, the EU leaders signed the Treaty of Lisbon with the aim of putting an end to one of the most serious crisis suffered by the European integration process during its nearly 60 years of existence.

For many authors, the Treaty of Lisbon left aside the constitutional format¹² and drafted the main aspects of the failed Constitution contents in the classic form of an International Treaty¹³. This allowed the UE leaders to approve the key aspects of the Constitution without popular ratification.

This context put back the legitimate force of the EU on efficiency and not on democracy. After the failure of the constitution, nowadays the perception of legitimacy lies in the economic integration success rather than in democratizing reform of the institutions.

¹² F. Aldecoa Luzarraga y M. Guinea Llorente: "¿Hacia dónde va la Unión Europea? La salida del laberinto constitucional ante el Consejo Europeo de junio de 2007", *Revista General de Derecho Europeo* 2007, núm. 14, www.iustel.com; Martín y Pérez de Nanclares, J.: *Soluciones al actual impasse constitucional en la Unión Europea: la opción del Tratado reducido*, DT 16/2007 (www.realinstitutoelcano.org); Martín y Pérez de Nanclares, J.: "Estudio preliminar [al Tratado de Lisboa]", (www.realinstitutoelcano.org).

¹³ See the minutes of the Complutense International Seminar of European Constitutional Law, organised by the Complutense Institute for Critical Law Studies held in Madrid, April 17 and 18, 2008:

http://ucinema.sim.ucm.es/video/demandawebct/derecho/374628_1.htm

http://ucinema.sim.ucm.es/video/demandawebct/derecho/374628_2.htm

http://ucinema.sim.ucm.es/video/demandawebct/derecho/374628_3.htm

http://ucinema.sim.ucm.es/video/demandawebct/derecho/374628_4.htm

http://ucinema.sim.ucm.es/video/demandawebct/derecho/374628_5.htm

http://ucinema.sim.ucm.es/video/demandawebct/derecho/374628_6.htm

Summing up, according to the above analysis, it cannot be denied that the failure of the constitutional treaty is the failure of a traditional way of legitimizing the EU. Assuming this, we may choose among three choices: that the Lisbon Treaty constitutionally legitimize the EU; that the failure of the constitutional treaty has no impact on the way of legitimizing the EU; or, finally, that the EU sort of reinforce its traditional way of legitimization through effectiveness: solving the problems that affect to EU citizens but can be resolved by the Member States. Environmental issues are undoubtedly among those problems.

3. Environmental degradation as a global issue

We have to consider the environment as a global good. Environmental quality benefits to all humankind, also the future generations; and environmental degradation damages all Earth population. We cannot longer talk about local environmental externalities because now we are conscious that every single anti-environmental action has a spill-over effect which is susceptible to spread along time and space¹⁴.

Throwing a cigarette butt out of the car window means that the filter, designed to last forever and made of plastic, not of paper or cotton, will consequently remain forever on the Earth surface; besides, it contains chemicals which pollute near water sources and adversely impact wildlife. Or when buying a meat loaf in the super-market, perfectly wrapped in identical and hygienic aligned trays made of polyurethane, which is non-biodegradable, if we do not recycle the tray after use. Switching on the air conditioned or the heat means to be burning fossil fuels which cast to the atmosphere tons of CO₂, one of the gases which, at a high level of concentration, dramatically accurate the natural greenhouse effect of the atmosphere. Printing the day emails implies wasting sheets; and paper manufacturing casts to the air, among other gases, SO₂ susceptible to provoke acid rain, and also GHG, in addition to its contribution to deforestation. And so on.

¹⁴ Future generations are also involved in current human actions which harm environmental quality. See: Solow, R.M.: "The Economics of Resources or the Resources of Economics", *American Economic Review* 64 (2), 1974, pp. 1-14.

In sum, environmental resources are global commons. And global is also the impact of the damages inflicted to them nowadays. The environmental consequences associated to air, water and soil pollution, like acid rain phenomena, depletion of ozone layer, global warming and climate change, loss of biodiversity, water scarcity, desertification, waste, etc. have a global dimension. And consequently the measures to abate environmental pollution should also have the same global scope¹⁵.

Probably the most paradigmatic example of the worldwide dimension of the environment is constituted by the greenhouse effect emissions to the air, heavily responsible of global warming and climate change. We call it *global* warming, firstly, because the GHG are cast to the atmosphere which is geographically borderless. Atmosphere does not belong to one or another country. As it is obvious, it is not feasible to allocate a slice of air to any particular territory, which avoids the air, and the air quality, to be “captured” by property rights.

In the second place, and more important, the damages caused by the emission of GHG to the atmosphere have an impact which is not only transnational but global. It is not a matter of two, five or twenty five states among each other but a problem which affects the whole planet. It is indifferent to emit a ton of a greenhouse gas in Madrid or in Halifax, because the impact in terms of its global warming potential does not differ¹⁶. And it is also indifferent the place where a ton of CO₂ is captured, for example it is the same to reforest here or in Bombay because the only relevant thing is the amount of CO₂ captured by the trees. This is why the Amazon Rainforest is described as “the lungs of our planet”. All the inhabitants of the world are interested in its conservation, because its single existence takes profit to the whole world.

¹⁵ For further details, see Barrett, D.: “The Problem of Global Environmental Protection”, *Oxford Review of Economic Policy*, 6, 1990, pp 68-79.

¹⁶ Ellerman, A.D.: "Tradable Permits for Greenhouse Gas Emissions: A primer with particular reference to Europe", *MIT Joint Program on the Science and Policy of Global Change, Report Series*, N° 69, 2000, p. 7ff.

However, the globality of the effects of greenhouse emissions does not mean that these effects will be suffered to the same extent by each country of the world¹⁷. The climatic mutations could open some new agricultural opportunities in some areas due to the diminishing winters. In contrast, will negatively affect to some areas; for example, the sea level rise due to the reduction of sea-ice cover will be particularly accurate in coastal countries, deeper countries and islands. It has also been suggested, and in some cases even proved, a significant correlation between climate change and the growing virulence of some ocean-atmosphere phenomena like El Niño. El Niño generates meteorological disasters since long ago, especially focused in Latin America, and also important climate variations are been observed in the US, Eastern Africa and Japan due to this combination of global warming and El Niño. Another consequence of global warming is desertification. This will particularly affect dry areas.

Nevertheless, being the former true, in the age of globalization all these negative effects spread through the entire world. Poverty generates migrations to wealthier countries. These migratory movements have evident consequences for the economic and social fabric of the receptor countries. Poverty is also a potential source of conflicts. Particularly, the fight for natural resources like water, oil or gas can constitute in a closer future a source of important international conflicts and even wars¹⁸.

Summarizing: we face a global issue, not an individual or local problem, with global implications. That is why traditional instruments used to encourage environmental protection and to punish environmental degradation, such as domestic taxes, domestic command-and-control regulations and domestic criminal sanctions, do not fit with the actual size of the problem: a worldwide

¹⁷ See the information about the current evidence and the future impact of climate change, and how its effects are geographically distributed in the United Nations Framework Convention on Climate Change (UNFCCC) website:
http://unfccc.int/essential_background/feeling_the_heat/items/2902.php

¹⁸ Raleigh, C. and H. Urdal "Climate Change, Environmental Degradation and Armed Conflict", paper presented to the 47th Annual Convention of the International Studies Association, San Diego, CA, 22–25 March 2006.

dimension¹⁹. At least they are not powerful enough to fulfil the current requirements and to cover all the elements involved in such a global issue. This is a consequence of the problem of the non-correspondence between the dimension of the affected public good: the environment (global), and the scope of the sovereignty which traditionally has got the power to implement environmental policies (national)²⁰.

These circumstances provide negative incentives to implement policies and measures intended to protect the natural environment by the single states in the international context. In other words, the countries are encouraged to develop *free-rider* behaviours²¹. If the effects of my pro-environmental actions will profit to the entire world though the costs of implementation are going to be supported only by myself, I have a strong incentive to stand by and wait. Summing up, this situation constitutes a larger scale version of the classical *prisoner's dilemma*²², actually at an intergovernmental scale with n players, being n the number of all countries in the world. Thus if we let each nation free to decide the level of environmental care/degradation, it will result in excess pollution. This is so because the benefit derived from pollution abatement or environmental quality preservation, as long as it is a global benefit, spreads around the world among all the nations. In contrast, the costs of acting (investing in clean technologies,

¹⁹ See Herber, B.P., *cit.*, p. 8.

²⁰ Herber, B.P.: "International Environmental Taxation in the Absence of Sovereignty", *International Monetary Fund*, Working Paper 104, 1992.

²¹ In game theory terms, a free rider is an agent who draws benefits from a cooperative society without contributing. It is the typical non-altruistic agent.

²² In game theory, the prisoner's dilemma is a typical non-zero-sum game in which two players may each cooperate with or defect from the other player. It refers to two prisoners (the players) who during the interrogation have a choice each: whether to betray the other or stay silent. Betraying the other will decrease one's own jail time as a compensation (by, e.g., 1 month), while increasing the jail time for the other (by, for example, 10 years). We assume that: i) each of the prisoners is only interested in receiving the least possible sentence; and ii) the prisoners make their choices (to betray or to stay silent) simultaneously, and they know for sure that their choice cannot affect the choice of the other one. The situation is a dilemma because after each of the prisoners makes his absolutely best and obvious choice (to betray), each ends up serving, for example, 11 years of jail time, while they both could have got away with only 13 months if stayed silent. The unique equilibrium for this game is a Pareto-suboptimal solution—that is, rational choice leads the two players to both play defect even though each player's individual reward would be greater if they both played cooperate.

implementing environmental education policies, charging green taxes on producers and consumers, etc.) would be supported only by the actors²³.

These free-riding behaviours would be minimized whether the geographical and political decision making dimensions were identical: both transnational. The jurisdictional overflowing of the environmental impacts of the human action can only be solved creating, or using the already existent international institutions capable to encourage environmental cooperation among nations. However, this solution often faces the reluctance of the nations to grant sovereignty to an international institution. Kyoto Protocol and its troublesome ratification, especially by the most pollutant, US, constitute an example of this resistance. This is particularly true when we talk about a transnational green tax or any other measure which involves the commitment of financial resources.

4. EU Environmental cooperation as a means to promote sustainable development

Our position is that the EU should adopt an active paper in the international scene fostering the environmental quality preservation. The reason is that EU citizens' quality of life is involved. As we explained before, the matters of loss of biodiversity, Amazon deforestation or global warming are not local problems but affecting to all the present and future inhabitants of the planet. Therefore, EU residents have the right to be protected against environmental degradation.

We think as well that a very relevant instrument to achieve this environmental aim at the international level should be cooperation with developing countries, either due to equity and effectiveness reasons.

Equity reasons which can be summarize in the fact that developed countries, and particularly EU Member States, are responsible of the current levels of

²³ See Demsetz, H.: "Toward a Theory of Property Rights", *American Economic Review*, Vol. 57, No. 2 (May), 1967, p. 354. In addition, particularly referring to climate change problem, its impact is far from being uniform along the world, as we described before. This fact deepens even more on the incentive to non-altruistic behaviours, as it makes harder to convince the potential winners to cooperate in reducing the environmental damages.

environmental degradation to a greater extent than developing countries²⁴, and also developed countries are in a better position to support the costs of implementing environmental policies.

Regarding to effectiveness, a big scale of operation in combating the big environmental issues implies a more effective action; thus, EU has a role to play *ad intra* as a catalyst of the efforts made by its member States, and furthermore as a support for them in this area, e.g. to comply with the reducing aims committed in Kyoto²⁵. *Ad extra*, cooperation with developing countries can be a very powerful instrument to achieve environmental goals, as we further explain below.

There are several reasons to justify that EU should have not only to join this cause in the international context, furthermore it should lead it:

First, the principle of common but differentiated responsibility²⁶, one of the cornerstones of sustainable development. The first time that this principle was explicitly formulated was in the context of the 1992 Rio Earth Summit, and was recognized first in the United Nations Framework Convention on Climate Change (1992)²⁷, and later in its Kyoto Protocol, signed in 1997²⁸. Now it constitutes a principle of International Environmental Law. According to this principle, there is a common obligation to preserve the environment which arises from the concept of common heritage and common concern of

²⁴ Bretherton, C. and Vogler, J. *The European Union as a Global Actor*, 2nd edition, Routledge, New York, 2006, p. 89.

²⁵ By Directive 2003/87/EC, the EU established a greenhouse gas emissions trading scheme for the cost-effective reduction of such emissions in the Community. This scheme was aimed at enable the Community and the Member States to meet the commitments to reduce greenhouse gas emissions made in the context of the Kyoto Protocol. For a detailed analysis on it see: Gutiérrez Franco, Y.: *El comercio de emisiones de gases de efecto invernadero en la Unión Europea : efectos sobre el crecimiento económico y la calidad ambiental*, Universidad Complutense de Madrid, 2004.

²⁶ For further details on the genesis and scope of the principle of common but differentiated responsibility see, e.g.: Cazorla, M. and M. Toman: "International Equity and Climate Change Policy", *Climate Issue Brief No. 27 Resources for the Future*, 2000.

²⁷ Full text available at: <http://unfccc.int/resource/docs/convkp/conveng.pdf>

²⁸ <http://unfccc.int/resource/docs/convkp/kpeng.pdf>

humankind; but on the other hand, it has into account the different historical contributions to global environmental problems; and financial, technological and structural capacity to tackle those global problems.

According with this, industrialized countries and EU among them, have the duty to carry out actions that remedy or mitigate the consequences of the past natural resources over-exploitation and pollution. We should not forget that the EU member States, even though their restrictive and protective environmental legislations, are also some of the most pollutant agents in the world.

Second, environmental quality is a normal good with respect to income. This implies that economic agents are willing to devote more resources to get higher environmental quality when income increases even if prices do not change. In this case and because of the externalities, individual agents are not usually the ones willing to spend more on a cleaner environment. In practise, the strongest relationship between income and pollution is through an induced policy response²⁹. This is why the richer countries are seen as environmentally more advanced, as their citizens value the environment which results in more restrictive regulations on air, water and soil pollution. The consequence is that the poor are not green, either because they lack awareness (they have no taste for environmental amenities because they have more immediate necessities) or they have not enough money to invest in the environment, or both reasons simultaneously³⁰. This is a clear sample of what we like to call “the globalization of environmental injustice”: the poor countries, which are not responsible for the tragedy, are even most strongly affected by the environmental problems such as climate change because do not have the capacity to deal with such overwhelming problems.

As a consequence, we think that European Union should lead the international movement of recognizing the actual economic value that environmental

²⁹ Grossman, G.M. and Krueger, A.B., “Economic growth and the environment”, *Quarterly Journal of Economics* 110, 1995, pp.353-377.

³⁰ Martinez-Alier, J., “The environment as a luxury good or .too poor to be green?” *Ecological Economics* 13 (1), 1995, p. 8.

resources have for all humankind and not only for the area where they are physically located. As industrialized countries have already depleted a great part of their natural resources, the vast majority of environmental wealth currently belongs to poor countries which did not develop an industrial revolution yet. These countries claim now their right to develop according with the same patterns which have been implemented by industrialised countries since 18th Century.

However, within the economically developed (but environmentally depleted) part of the planet we talk about sustainable development and regret traditional pollutant growth. It is an obligation for developed countries to pay for the preservation of those resources which benefit to all. It seems that undeveloped countries start to notice that their environmental wealth is market valuable. The declarations of the heads of the governments of some participating countries during the recent International Meeting on Climate Change in Latin America show this emerging position³¹. Particularly relevant was the Ecuadorian President call for a “universal survival pact” to fight climate change and environmental damage in general³². This pact would include, for example, the commitment to stop oil extraction by retrieving international compensations in exchange.

³¹ The International Meeting on Climate Change in Latin America was held in Quito, Ecuador, last October 17th, 2007.

³² An extract of the words pronounced by President Correa during the opening session of the International Meeting on Climate Change in Latin America: “No olvidemos finalmente dos temas de enorme trascendencia. El primero, relacionado con la injusticia globalizada, producto precisamente del calentamiento global, porque los países pobres no responsables de la tragedia, son afectados en mayor grado porque no tienen la capacidad de responder a desafíos de tales dimensiones. Son esos países pobres los que muchas veces son los mayores generadores de bienes ambientales, como los países de la Cuenca Amazónica y sencillamente no reciben nada a cambio, pero sí reciben las consecuencias de los países que depredaron ya su medio ambiente y siguen depredando el medio ambiente mundial. Y lo segundo, una respuesta que el gobierno de la revolución ciudadana ha planteado al mundo entero, el cambio cualitativo de la economía, en los conceptos de valores de uso y de cambio, con nuestra propuesta contenida en el ITT, que significa no sólo una innovadora propuesta energética: dejar el petróleo en tierra a cambio de una compensación del resto del planeta; significa, además, un cambio en la lógica económica. Compensar ya no la generación de valores de cambio, es decir, de mercancías, sino la generación de valores de uso, es decir, bienes con capacidad de satisfacer las necesidades.” The whole speech is available at:
http://www.comunidadandina.org/desarrollo/climalatino_RafaelCorrea.htm

Summarizing: they have what we need and now they are aware of it. They know as well that we value it more than they do, or at least that we have money to pay and that we will do so. The EU is willing to pay to reach a minimum commitment with sustainable development by these undeveloped but environmentally rich countries. The appropriate instrument for this exchange has already been invented, namely: cooperation.

5. EU Legal instruments for environmental cooperation

The EC, as it was conceived by the Treaty of Rome in 1957, left International Relations outside the integration process. And particularly the TEC did not even mention the environmental matter, because nobody was still worried about depletion of the ozone layer, Amazon deforestation, climate change, etc. Even at the state level, environmental regulation was still very scarce and basically focused to prevent or mitigate environmental problems with a national scope.

As a consequence, the first mention to our subject will come to EC Primary law 30 years later. The Single European Act (1987), establishes the legal basis for environmental policy. But it would be in the Maastricht Treaty (1992), in its Art. 130R³³, where the transversal nature of environment would be established, concretely with the following wording: “Environmental protection requirements must be integrated into the definition and implementation of other Community policies”.

The Amsterdam Treaty (1997), and the political impulse that we analyse latter, would create an inflection point that was not still overcome. In its Article 3c³⁴, on the one hand, confirms the principle of environmental integration into all Community policies and activities, as laid down in Amsterdam; while on the other, by moving it to the “Principles” section of the Treaty (Art. 6 of the

³³ Art. 174 consolidated version of the Treaty establishing the European Community.

³⁴ Article 3c “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.”

consolidated Treaty establishing the European Community), elevates it to the rank of a guiding principle of the EU.

The next step will not come through a Primary EC Law reform but through a interpretation of it. Concretely the interpretation of the above mentioned article the Amsterdam treaty by the European Council Summit hold in Cardiff (June 1998)³⁵, which was back by the European Council Summit hold in Vienna (December 1998)³⁶. There, the European Council considers that Amsterdam launches a process to promote the integration of the environment into all Community policy areas, including development policy³⁷. Furthermore, impel directly the European Commission -“The European Council endorses the principle that major policy proposals by the Commission should be accompanied by its appraisal of their environmental impact”³⁸- and the ordinary Council -“The European Council invites all relevant formations of the Council to establish their own strategies for giving effect to environmental integration and sustainable development within their respective policy areas.”³⁹- to act in consequence in future legislative acts.

This political impulse had it first repercussion in the European Commission Communication of 18 May 2000, entitled "Integrating environment and sustainable development into economic and development cooperation policy -

³⁵ CARDIFF EUROPEAN COUNCIL-PRESIDENCY CONCLUSIONS, 15 AND 16 JUNE 1998, 16/6/1998 (English) Nr: 00150/1/98 REV1

³⁶ VIENNA EUROPEAN COUNCIL-PRESIDENCY CONCLUSIONS, 11/12/1998, Nr: 00300/1/98 REV

³⁷ CARDIFF EUROPEAN COUNCIL 15 AND 16 JUNE 1998 PRESIDENCY CONCLUSIONS, *cit.*, point 1: “A healthy environment is central to the quality of life. Our economies must combine prosperity with protection of the environment. That is why the Amsterdam Treaty emphasises the integration of environmental protection into Community policies, in order to achieve sustainable development.”; VIENNA EUROPEAN COUNCIL-PRESIDENCY CONCLUSIONS, *cit.*, point 66: “The European Council reaffirms its commitments made in Luxemburg and Cardiff to integrate environment and sustainable development into all Community policies in view of the Amsterdam Treaty”.

³⁸ *Ibid.*, point 33.

³⁹ *Ibid.*, point 34.

elements of a comprehensive strategy"⁴⁰ According with the European Commission, the Treaty of Amsterdam provoked an inflection point by laying down three development objectives for the integration of the environment into European Union cooperation policy.

Firstly, *sustainable economic and social development*. In that field, the communication stresses that the governments of developing countries need systematically to take account of environmental aspects when drawing up economic and social policies;

Secondly, *campaign against poverty*. There, the Commission stresses that the objective should be to ensure systematic acknowledgement of linkages between poverty and environment in policy dialogues with developing countries;

Thirdly, *fostering the integration of developing countries into the world economy*. This objective, according with the studied communication, can be achieved through trade, development of the private sector and international investment. As regards trade, the Commission wishes to clarify the relationships between certain WTO (World Trade Organisation) rules and the environment. As regards the private sector in developing countries, the Commission will ensure that private sector operators integrate environmental considerations into all their operations (e.g. environmental auditing and reporting, environmental management systems, adherence to internationally agreed codes of conduct, etc.). Finally, the communication recommends that regulations in developing countries on international investment should take account of environmental protection.

One year later came the second clear consequence of the legal -Amsterdam Treaty- and political -Cardiff European Council- impulses. We are referring to the Council Conclusions of 31 May 2001, "Strategy for the integration of environmental considerations into development policy to promote sustainable

⁴⁰ Commission Communication of 18 May 2000, entitled: "Integrating environment and sustainable development into economic and development cooperation policy - elements of a comprehensive strategy" [COM(2000) 264 final]; see also the Commission staff working paper "Integrating environment into EC economic and development cooperation", [SEC(2001) 609]

development”⁴¹, where the above mentioned Commission communication was explicitly taken into account⁴².

In this strategy, the Council underlines the importance of integrating environmental considerations into all Community initiatives in the field of development cooperation. Priority should be given to:

- enhanced policy dialogue with partner countries on environmental issues;
- systematically incorporating environmental considerations into the preparation of all strategic plans and programmes for EC development cooperation;
- mainstreaming environmental considerations into the six priority themes for EC development cooperation, namely trade and development, regional cooperation, poverty reduction, transport, food security and institutional capacity building.

The next step in the process was the so called “The European consensus on development”, settled on a Joint statement by the Council and the representatives of the governments of the member states meeting within the Council, the European Parliament and the Commission (November 2005)⁴³. According with the commission three aspects should be underlined:

⁴¹http://www.environment-integration.org/Download/E12a_DevelopmentCooperation/Council_Conclusions.pdf

⁴² *Ibid.*, “The Council, therefore, warmly welcomes the Commission working paper "Integrating the environment into EC economic and development co-operation", point 1.4.

⁴³ Joint statement by the Council and the representatives of the governments of the member states meeting within the Council, the European Parliament and the Commission “The European consensus on development”, DG E II, 14820/05, 22 November 2005. See also: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Council and the Committee of Regions: Proposal for a Joint Declaration by the Council, the European Parliament and the Commission on the European Union Development Policy «The European Consensus», doc COM (2005) final, 13 July 2005; Joint declaration by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on the development policy of the European Union entitled "The European Consensus" [Official Journal C 46 of 24.2.2006]

- “Protection of the environment must be included in the definition and implementation of all Community policies, particularly in order to promote sustainable development”⁴⁴.
- “Strengthened approach to mainstreaming – the Commission will re-launch this approach, making systematic and strategic use of all resources at its disposal”⁴⁵.
- “Strategic environmental assessments and gender-equality impact assessments will be carried out on a systematic basis, including in relation to budget (greening the budget) and sectoral aid”⁴⁶.

The importance of European consensus on development, though not being a legislative act, come from the absolutely lack of a common EU policy on cooperation. As the Commission put⁴⁷, there are so many policies as states, because of the lack of political will and its reflection in EC Primary Law⁴⁸. Thus Maastricht when including the first recognition simply set up the need of actions coordination.

As is been put⁴⁹, the European Council of Brussels (December, 2005)⁵⁰, giving the impulse to the financial perspective for 2007-2013, created the momentum

⁴⁴ *Ibid.*, Environmental sustainability, point, 105.

⁴⁵ *Ibid.*, section 3.3.

⁴⁶ *Ibid.*, Gender equality, point 104.

⁴⁷ «EU Report on Millenium Development Goals 2000-2004: EU contribution to the review of the MDGs at the UN 2005 High Level Event», Brussels, Commission Staff Working Document, 12 abril 2005; J. Á. SOTILLO, «La Unión Europea y la definición de su política de cooperación para el desarrollo», *Revista española de desarrollo y cooperación*, primavera-verano de 2004.

⁴⁸ In detail Francesc Granell: *La coopération au développement de la Communauté Européenne*, Institut d'Etudes Européennes de l'Université de Bruxelles, Bruxelles, 2005; Francesc Granell: “La política de cooperación al desarrollo de la Unión Europea”, *ICE: Las políticas comunitarias: una visión interna*, 2006, nº 831.

⁴⁹ “La aprobación por el Consejo Europeo de Bruselas de diciembre 2005, de las Perspectivas Financieras 2007-2013 ha abierto los cauces necesarios para ir poniendo en marcha las propuestas de reglamentos sobre ayuda comunitaria antes mencionadas y una serie de ideas incluidas en la Declaración Conjunta Consejo/Parlamento Europeo/Comisión Europea aprobadas por el Consejo del 22 de noviembre de 2005⁴⁹ respecto a la conducción de la cooperación al desarrollo por la UE y sus Estados miembros en base a la Comunicación sobre cooperación al desarrollo presentada por la Comisión”, Francesc Granell: “La política de cooperación al desarrollo de la Unión Europea”, *cit.*, p. 148.

to concrete EU action in this field. The cornerstone of this new instruments process is the Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation⁵¹. Among the objectives of the instrument laid down in article 2, we can find two legal bases for environmental cooperation, thus:

- “Foster the sustainable development including political, economic, social and environmental aspects of partner countries”
- “Help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development, including addressing climate change and biodiversity loss”

Environment, being probably the most important innovation in the new instrument, plays a key role in its implementation. Implementation of the financing instrument for development cooperation will be developed through the annual action programmes adopted by the Commission. The regulation indicates that this action programmes should be adopted based on the strategy papers and multiannual indicative programmes where usual standards and requirements applies⁵². But at a project level, environment is the only structural requirement to take into account:

“Appropriate environmental screening shall be undertaken at project level including environmental impact assessment (EIA) for environmentally sensitive projects, in particular for major new infrastructure. Where relevant, strategic environmental assessments (SEA) shall be used in the implementation of

⁵⁰ “At the same time, the financial perspective for 2007-2013 will have to provide the Union with adequate funds to carry through the Union's policies in general, including the policies that contribute to the achievement of the Lisbon priorities. Sound macroeconomic conditions are essential to underpin the efforts in favour of growth and employment. The amendments to the Stability and Growth Pact will contribute to this and at the same time enable Member States to play a full role in relaunching long-term growth”. European Council Presidency Conclusions – Brussels, 22/23 March 2005, point 7.

⁵¹ OJ L 378, 27.12.2006, p. 41–71.

⁵² *Ibid.*, 24.3, “Annual action programmes shall specify the objectives pursued, the fields of intervention, the expected results, the management procedures and total amount of financing planned. They shall contain a description of the operations to be financed, an indication of the amounts allocated for each operation and an indicative implementation timetable. Objectives shall be measurable and have time bound benchmarks.”

sectoral programmes. The involvement of interested stakeholders in environmental assessments and public access to the results shall be ensured”⁵³.

Last but not least we must refer to the Lisbon Treaty as the last modification of EU Primary Law currently in ratification process. In our opinion, there are no substantive changes in the main legal base to deal with environment. The article in the original EU Constitution was exactly the same as the article in current treaties. Concretely, the Lisbon Treaty only includes a new specific reference to climate change. But this new wording does not in any way affect the Union’s actual powers to deal with this issue, or generally with environment where climate change was always included.

After Lisbon the new article 191 ⁵⁴(ex 174) ECT will establish:

Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, *and in particular combating climate change*⁵⁵.

Summarising: the EU Legal and non legal instruments for environmental cooperation trip allows us to conclude the lack of a concrete instrument or even the lack of a clear systematic in its needed components. The EU environment cooperation consists in a mere accumulation of steps in the EU integration process that has responded to political *EUforias* and *Europhobias*.

The bad news is that there is not such a thing as an environmental cooperation instrument rooted and developed in either EU Primary or Secondary law.

⁵³ *Ibid.*, article 24.4

⁵⁴ Consolidated Versions of The Treaty on European Union and the Treaty on the Functioning.

⁵⁵Emphasis added.

The good news is that the environment legal base, particularly as regulated in the Amsterdam Treaty –and basically maintained afterwards, also in Lisbon-, has a transversal expansive nature that, with political will –as the one manifested for instance in Cardiff-, is enough to put environment as the main pillar within EU cooperation policy.

6. Concluding remarks

The case of the EU environmental cooperation with developing countries is, and will be even more in the close future, a basic pillar in the legitimacy of the integration process. As we showed while studying the double legitimacy of the integration process -democracy versus effectiveness- this is even more significant after the failure of the constitutional treaty. We cannot support, as some Head of State and Government, the idea that nothing happens for saying treaty where constitution was said; neither for –like in Spain- substituting popular sovereignty by parliamentary ratification.

To abandon the constitutional idea means, at least for the moment, to abandon the constitutional legitimating path. Consequently we have two options: facing a lost of legitimacy or reinforcing the traditional integration legitimating path, namely: emphasising the EU capacity to improve the Member States citizens' quality of life, precisely where their States appear powerless. Environment is here a paradigm: a global problem, with local and global repercussions, needs a global actor.

The EU is a global actor, but does it have an adequate global tool? As we have seen, no global instrument but cooperation fits the actor and the problem: because of the EU values; the developing countries situation and awareness; and the environment idiosyncratic nature, global in its scope and state cooperation demanding.

Then allow us to ask again: is there an EU environmental cooperation instrument? We do not have “the” proper instrument because of the historical

lack of political will but, before and after Lisbon, we have instruments enough for the proper political will.