

The Editors of the *Fordham International Law Journal* dedicate this Fourteenth Annual Issue on European Community Law to Hugo Paemen, former Head of the European Commission Delegation to the United States. Mr. Paemen was Ambassador from 1996 to 1999. During his tenure, Mr. Paemen dealt with numerous issues involving European Union and U.S. relations. One of his most important accomplishments in strengthening European Union and U.S. relations was the establishment of 10 European Union centers throughout the United States.

We would also like to thank Mr. Paemen for his contributions to the *Journal*.

## INTRODUCTION

### LOOKING BACK . . . AND AHEAD

*Hugo Paemen\**

Looking back, at the beginning of the new millennium, one may find it difficult not to yield to the somewhat Hegelian view that the last two centuries witnessed history finally getting even with Europe and the detrimental forces it unleashed during the course of the last century. The names of these forces were extreme nationalism, proletarian revolution, national socialism, communism, fascism, and dictatorship in its different forms. Will Europe use what seems to be an interlude to establish the foundation of a solid continental democracy?

It is also difficult not to be impressed by the decisive role that, over and again, was played in this historic process of retrieval by the United States of America. Directly and indirectly, the United States was ready to rescue and heal where Europeans seemed to stumble. But this type of oversight could not happen without leaving heavy marks. How do the Europeans view the future of their unified continent in a globalized world, working with the different pieces, values, traditions, and experiences inherited at the end of the twentieth century?

It seems that any projection of Europe's future today must pass through the prism of its multi-faceted relationship with the United States. To some Europeans, this thought is obnoxious. The role of the United States as the sole world power, however, makes this concept even more ineludible. How should it be done? And how can the

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United States help, once more? These are some of the thoughts that occasionally crop up in the back of the mind of someone dealing with the day-to-day vicissitudes of European Union (“EU”) and U.S. relations.

### I. THE NEW TRANSATLANTIC AGENDA

On December 3, 1995, President William Clinton for the United States, and Prime Minister Felipe González and President Jacques Santer for the EU, signed a remarkable document. Ambassador Stuart Eizenstat, who was the main promoter of the initiative, called it “the most significant step in US-EU relations since the beginning of the European integration movement in the 1950s.” The underlying reason for the document was that—in the light of the new geo-political developments after the collapse of the Soviet Union— “new challenges at home and abroad,” facing the U.S. and the EU were “determined to reinforce (their) political and economic partnership as a powerful force for good in the world.” As a result, an extensive Joint Action Plan was approved that covered four main areas: diplomacy, global societal challenges, international economic relations, and people-to-people relations. Furthermore, more systematic mutual information, consultation, cooperation, and common action (where possible) were scheduled under the guidance of a Senior Level Group (“SLG”) of sub-cabinet officials from both sides.

The New Transatlantic Agenda (“NTA”) initiative has fostered the unfolding of cooperative initiatives in many areas, more particularly under the two most innovative headings: “Global Challenges” and “People-to-People Contacts.” Regulators and agencies, traditionally very reluctant to share their information in areas such as international crime, drug trafficking, terrorism, environment, and public health have opened communication channels, compared problem analyses, and cooperated to find the best solutions to common problems.

As for the People-to-People Contacts, new ties have been established at the non-governmental level between different elements of the civil societies on both sides. Consumer organizations, environmental groups, trade unions, and business organizations, respectively, have initiated transatlantic dialogues aimed at establishing solutions to common problems. The working method, adjusted by each group to its own needs, is always the same: a common analysis of the specific sectors by the representatives of both sides, without governmental interference. Each group develops common recommendations, which are then addressed to the respective authorities.

It was predictable that the transatlantic business dialogue (“TABD”) would be the easiest to launch, given the existing channels of communication and communality of

interests. The added value of the TABD process, embodied in concrete results such as the Mutual Recognition Agreement (“MRA”) negotiations, has already been widely recognized and applauded by the business communities on both sides. But the same spirit of pragmatic and efficient cooperation prevails in other dialogues.

One of the most promising dialogues should become the recently inaugurated Transatlantic Legislators Dialogue, where members of the U.S. Congress and the European Parliament discuss common problems and compare legislative approaches. A number of so-called transatlantic irritants (not to speak of “wars”) could have been avoided if this type of preventive dialogue had occurred before legislative action took place. It is surprising that in two more “traditional” sectors (diplomacy and economic/trade relations), the added value of the NTA structure seems to have been unimpressive. From the media headlines one could even infer that, when it comes to the trade sector, NTA stands for “New Transatlantic Arguing.” This might refer to the highly visible litigation in the World Trade Organization <sup>1</sup>/ (“WTO”) on bananas, hormone-based meat, and genetically modified organisms (“GMOs”), as well as to the hushkits and private data discussions. The defunct New Transatlantic Marketplace, which the NTA was “determined to create,” along with the quasi-abortive Transatlantic Economic Partnership, and the failure of the WTO Ministerial in Seattle indicate that a real dialogue or a cooperative partnership needs more than a Summit promulgation and an additional bureaucratic apparatus.

Equally disappointing comments can be heard about the absence of real dialogue in matters of international political relations. Under the general heading “Promoting Peace and Stability, Democracy and Development around the World,” the scope for political cooperation in the NTA was basically limited to the wider European zone (including Russia and the Newly Independent States), the Middle East, and humanitarian assistance activities. An easy answer to the skeptics might be to refer to the growing number of meetings between experts and officials and the increasing number of attendees at these meetings. But that will probably not be considered enough to create a “powerful force for good in the world.”

Europeans will easily invoke the rather ambiguous attitude of the U.S. political establishment vis-à-vis the U.S.-EU partnership in political matters. The feeling remains that the emergence of a full-fledged European partner is not being encouraged. The preference seems to go to a certain freedom to choose the right European ally on the

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<sup>1</sup>/ Agreement Establishing the Multilateral Trade Organization [World Trade Organization], Dec. 15, 1993, 33 I.L.M. 13 (1994) [hereinafter WTO Agreement].

right issue. U.S. interlocutors have an easy counter-argument by referring to the absence of a real common foreign policy and to the ineffective European decision-making process.

## II. THE FACTS

The economic interdependence between Europe and the United States is without comparison in the world and increases steadily. Mutual trade and investment have made the transatlantic marketplace a reality, notwithstanding the bureaucratic disputes. Europeans have recently added more than US\$100 billion a year to their investment stock in the United States, which represents more than half the total U.S. Foreign Direct Investment. They have a substantial trade surplus, which reflects the macro-economic reality of the market at this moment. U.S. investors are present in the majority of major European companies. Millions of jobs have been created through these mutual investment flows.

Thanks to the wider contacts promoted in the context of the NTA, more citizens outside the business community participate in transatlantic exchanges and common projects. When the delegation of the European Commission in Washington suggested, two years ago, the creation of some EU centers at U.S. universities and research institutes, more than sixty proposals followed. We had to reduce them to ten for funding reasons. It appears that the recent developments in Europe, such as the creation of the Euro and the decision to enlarge the EU to the countries of Central and Eastern Europe have considerably increased U.S. curiosity concerning the European integration process. It would be beneficial if a similar stimulus for the development of Centers for American Studies could be created in Europe. Based on abundant media information, we have a tendency, on both sides, to overestimate the extent of our knowledge of each other and to take our mutual understanding as a given.

The survey on the *American Public Opinion and U.S. Foreign Policy*, published by the Chicago Council on Foreign Relations in 1999, showed that: “As in previous surveys European Nations remain America’s closest friends and allies measured in terms of temperature readings on the feeling thermometer by the public.”<sup>2/</sup> Furthermore, “[p]erhaps influenced by progress on European Monetary Union and the contrasting gloomy financial news from Asia, leaders register an increase in their assessment of Europe’s importance over Asia, from 42% in 1994 to 51% . . . .” At the same time,

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<sup>2/</sup> CHICAGO COUNCIL ON FOREIGN RELATIONS, *AMERICAN PUBLIC OPINION AND U.S. FOREIGN POLICY 1999* (John Rielly, ed. 1999).

despite the fact that “Americans have warm feelings for Europe, they see greater vital interests in other parts of the world presumably because that is also where they see more problems.” It is indeed likely that this strong, long-lasting friendship has the disadvantage of being somewhat taken for granted.

Beyond the economic area, a realistic view of the U.S.-EU partnership will need to take into consideration some other basic facts. On the U.S. side, the position of sole superpower can lead to an impulsive overestimation of what can or should be achieved, or to deep frustration when it appears that there are clear limits to what can be done. Disappointments in that sense, combined with the feeling that vital interests are not under threat, must largely be at the origin of what is called the isolationist, or inward-looking tendencies in parts of the political establishment, especially Congress.

According to the study by the Chicago Council on Foreign Relations on *American Public Opinion and U.S. Foreign Policy*, the U.S. public has remained internationalist, but places the highest priorities on foreign policy goals aimed at protecting its interests rather than pursuing change abroad. U.S. diplomacy reflects this development. It has become more reactive and discretionary, hesitating between engagement and reprimand. In the same vein, it will probably remain or become more exclusionary, *i.e.*, concentrated on how it can foster, in the most direct way, U.S. interests in the big issues (anti-ballistic missile systems, China, Middle East, and Russia). As the only power with global responsibilities, the United States feels that it can only share some of them for limited purposes. This goes for countries as well as for international organizations. The same tendency also seems reflected in the foreign policy thinking of the Republican party candidates for the U.S. presidency.<sup>3/</sup> Not unexpectedly, the most unvarnished presentation of this approach came from the powerful U.S. Senate Foreign Relations Committee Chairman during his historic presentation before the U.N. Security Council January 20, 1999. The very limited time given to foreign policy in the longest State of the Union presentation of this administration this year can be seen as another indication of the same overall attitude.

On the European side, progress has been made since the ratification of the Treaty of Amsterdam.<sup>4/</sup> This is true in terms of the preparation of the decision making in

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<sup>3/</sup> Condoleezza Rice, *Promoting the National Interest*, Foreign. Aff., Jan./Feb. 2000, at 45; Robert Zoellick, *A Republican Foreign Policy*, foreign aff., Jan./Feb. 2000, at 63.

<sup>4/</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct. 2, 1997, O.J. C 340/1 (1997) (amending Treaty on European Union (“TEU”), Treaty establishing the

foreign policy matters as well as the presentation of the policy, thanks to the designation of Javier Solana as Secretary General of the North Atlantic Treaty Organization (“NATO”) and spokesperson for the EU in political matters. But the decision-making process has not been substantially changed and still operates on the basis of consensus decisions. This will continue to limit the operational strength of the Common Foreign and Security Policy (“CFSP”). There is indeed a growing feeling that in order to become more effective and relevant the CFSP will have to introduce more majority voting.

The initiatives taken in recent years to develop cooperation in the defense sector, such as the British-French partnership in Bosnia and the Franco-German Eurocorps, which is now being enlarged, are also of considerable significance. Moreover, the integration of the Petersburg Declaration into the Treaty of Amsterdam and the way in which the Franco-British defense initiative has been taken over by the EU and further integrated in the discussions about the future organization of NATO, seem to indicate that the logic of the progressive integration of the European continent has now entered these more delicate sectors.

### CONCLUSION

In the near future, U.S.-EU relations in these matters will need to take into account and live with these basic facts. The relationship between two equivalent economic partners will remain lopsided for some time, as far as political and military matters are concerned. The United States will want to conduct a global foreign policy based on a strong economy and a unique military capability. The EU will need to concentrate mainly on its enlargement, its institutional reforms, and its relations with its close neighbors. But that leaves a considerable communality of interests in all sectors, which should convince both sides that an open, trustful dialogue is more worth spending one’s energy on than the exacerbation of passing trade irritants or short term bureaucratic rivalries,

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European Community (“EC Treaty”), Treaty establishing European Coal and Steel Community and Treaty establishing the European Atomic Energy Community and renumbering articles of TEU and EC Treaty).