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THE APPLICATION OF THE PRINCIPLE OF
SUBSIDIARITY AND THE REGIONS

Conferència pronunciada per
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European public opinion has displayed growing reservations in the face of the possibility that the road to European Union may lead to a model which is centralized, imposes uniformity, is inefficient and places increasing importance on the new Brussels-based bureaucracy.

This reception has been put to great use by opponents of the ratification of the Treaty of European Union, who have rightly based their theses on some of the decisions of the European Community which demonstrate an excess of interventionist spirit in the creation of the Community.

Although it is very difficult to find a suitable balance between the creation of European unity and total respect for the powers and responsibilities attributed to the existing administrations, everyone agrees that new, excessive European bureaucracy is to be avoided.

The European Parliament, aware of this underlying problem, came to grips with it by the approval of Giscard d'Estaing's report on the application of the principle of subsidiarity in the European Union last year.

Fortunately, this initiative has been ~~supported by~~ incorporated by the Council of Europe into the Maastricht Agreements on the Treaty of European Union, defining the principle of subsidiarity in article 3B, which we will go on to discuss later.

Like any constitutional principle, -and in fact the Treaty of European Union means a new constituent Treaty of the Communities-

the definition of the principle of subsidiarity is very broad and depends on the political moment and the forces present in the Community framework. This is why, at the present time, attempts to define the content and application of the principle have led to different positions being taken up by some governments, such as:

- 1) The British position, which in fact implies a devolution of the powers and responsibilities of the Commission to the states.
- 2) The position which backs the application of the principle, though limiting it to relations between the Community and the states.
- 3) The position which sees the extension of the principle to the regions.

We will now go on to examine it in detail, and see what is the meaning, the definition and application of the principle of subsidiarity, and which position extends the principle of subsidiarity to the incorporation of the regions.

The meaning and importance of the principle of subsidiarity

The principle of subsidiarity is one of the key notions in understanding the scope and meaning of the Treaty of Maastricht.

In the course of the Intergovernmental Conferences held in 1991 to prepare the text of the Treaty, the question as to what the limit of Community powers and responsibilities should be and how

it could be more effectively related to those of the member states was basically centred around discussion of the definition and consequences of the notion of subsidiarity, understood as a guideline along which to advance with more democratic guarantees in the process of European construction, in its two-fold role of criterion for political action and principle for the generation of legal obligations.

In fact, one of the most important questions considered during the above-mentioned Conferences was the need for the Treaty of Maastricht to try to respond to the general fear, shared by some member state governments and their respective public opinions, that the process of moving towards European unity may imply an excessive centralization towards Community administration.

Furthermore, added to this general concern was a certain impression that the Community was trying -unduly and superfluously- to bring into line aspects which were very deeply rooted in the singular nature of each state, giving its citizens and state parliaments the impression that their rights and aspirations were being sacrificed unnecessarily to the process of European integration.

In this sense, it can be said that finally, the Treaty of Maastricht, by especially incorporating the principle of subsidiarity into the basic legal texts of this process for the first time, has provided a positive answer to these problems, by the fact that it represents a specific criterion of political and legal evaluation as to what the limits on future powers and responsibilities of the Community should be within the dynamics of European integration.

The aim of the introduction of the principle of subsidiarity into the Treaty has therefore been the desire to place a limit on the extension, by any means other than democratically, of the future powers and responsibilities of the Community; and this at a time when precisely as a result of the Treaty, a new phase was being undertaken on the path to European unity, characterized by deeper integration among member states, above all in economic and monetary aspects.

So we can say that the Treaty of Maastricht provides the Community with a solid basis on which to continue the task of constructing European unity, defining the framework within which this aim is to be achieved and the common actions to be undertaken if necessary and, at the same time, introducing new, legally-binding limits on the actions of Community institutions in those instances in which this action could be considered to be superfluous or unduly invade the powers and responsibilities of member states.

Definition

Article B of the Treaty points out that "the aims of the Union will be achieved with regard to the principle of subsidiarity, as defined in article 3B of the constituent Treaty of the European Community".

So, the new article 3B of the constituent Treaty of the European Community defines the notion of subsidiarity; it does so in the following terms:

"The Community will act within the limits of the powers and responsibilities attributed to it by this Treaty and the

aims herein assigned to it.

In those areas which are not its exclusive powers and responsibilities, the Community will intervene, in accordance with the principle of subsidiarity, only in as far as the aims of the action to be carried out cannot be achieved sufficiently by its member states and consequently may be achieved more effectively as a result of the extent or the effects of anticipated action at Community level.

No action of the Community will exceed what is considered necessary to achieve the aims of this Treaty".

To express the same idea more simply, the principle of subsidiarity, as it is defined in this article, means that the intervention of the Community will only take place in the areas in which it can be considered to be more effective than the separate intervention of the administrations of the member states.

Furthermore -and this is a complementary but also very important aspect of this notion- the measures adopted by the Community in the above-mentioned areas will, in any case, have to be in proportion to the aims it is hoped to achieve.

So it is worth saying that the limit on the expansion of Community powers and responsibilities does not arise from a strict political decision to impede this expansion in itself, but from a concern that the entire process of Community construction be carried out with a guarantee of effectiveness and democratic legitimacy; that is to say, with the guarantee that the decision will be made by levels of political representation and legitimacy

-at Community or state level- which are more suited to achieving the hoped-for results.

Application

Nonetheless, different question marks hang over the practical application of what I have just explained. Who's job will it eventually be to decide whether an action is more effective if carried out by the Community or by the separate member states? Who will be responsible for ensuring control of this principle? And, in the end, what will be the practical consequences of the application of the principle in the immediate future, above all in the Community decision-making process?

First of all, in these questions it is necessary to stress that the adoption of Community decisions always involves a process of permanent negotiation among its various institutions; therefore the introduction of the principle of subsidiarity will simply mean that once the Treaty comes into force, each new legislative act of the Community could be examined under this principle or criterion and that the Commission and the Council, above all, will have to respect it both in word, as a legal restriction, and in spirit, as a political assessment.

Furthermore, it will be necessary to bear in mind that precisely because of its legally binding nature, the interpretation of this principle and its application to individual cases will be guaranteed by the intervention of the European Community Court of Justice, which will exercise a major role in specifying the content, limits and practical working of the principle.

Finally, it must be said that the logic behind the notion of

subsidiarity could encourage not only the decentralization of decision-making processes and the carrying out of Community actions between the Community and member states, but also between the Community and the European regions, because the desire for effectiveness in political management and respect for diversity in the project of European construction have their counterpart in the consideration of regional entities as differentiated territorial areas and, in many cases, as entirely suitable for the application of Community policies. However, this possibility depends essentially on the political determination of the member states' governments.

Different positions adopted with regard to the principle of subsidiarity

Different states, among them Germany and the United Kingdom, insisted on the introduction of this principle during negotiation of the Treaty of Maastricht.

The United Kingdom hoped to slow down the process of Community integration and even reduce Community scope. (Major spoke of "scrapping" part of Community legislation in force). It was even said, in British quarters, that this would help to overcome Denmark's mistrust of Maastricht, though Denmark itself had never used these arguments, nor had it shown itself to be particularly interested in this principle.

Germany, on the other hand, defended the role of the regions in the drawing up and application of Community law when the powers and responsibilities of the *Länder* were affected; therefore in the application of the principle of subsidiarity, sub-state and regional levels should be included.

Spain holds a very rigid position, considering that this principle should not be applied internally or affect the division of powers and responsibilities between the Spanish State and Spanish Autonomous Communities or regions.

The European Parliament considers that the notion of subsidiarity must not be applied to renationalize Community politics. It also believes that neither Community scope nor institutional balance should be questioned. As regards the regions, the Commission thinks that the future Regions Committee must not be left out of Community action and all efforts must be made to ensure that this Committee pronounces itself on all matters which affect it.

European integration and regional participation

The European regions, which are taking on a growing political role in the Community as a whole, have increasingly defended both their institutional recognition within the Community itself and their desire to take part actively in the process of European construction.

We must remember that since the creation of the European Community in the fifties, a slow but sure process of political and administrative decentralization has been taking place in several member states in favour of *Länder*, nations, autonomous communities and regions; having the powers and responsibilities to create legislation or take action by virtue of their Statutes, these regions, like Catalonia, are directly affected by European construction. We must bear in mind that while the states recover control of the powers and responsibilities transferred to the Community, in that they participate directly in Community

Councils of Ministers, the regions have demonstrated their concern at the possibility of being left out institutionally and politically of the process of Community construction.

In response to this situation, the Treaty of Maastricht created the Regions Committee which, despite its initial limitations, will allow the organization of the opinions and channelling of interests of the regions. The regions will therefore, for the first time, have an advisory body to represent them at Community level, which will have to be consulted in many matters.

This has been possible thanks to the position adopted by certain European states, such as Germany and Belgium. But also worthy of mention is the work of the Assembly of European Regions, whose president is currently Mr. Jordi Pujol, President of the Generalitat, Government of Catalonia, who, since the Assembly was founded in 1985, has promoted the role of European Regions in the creation of the European Union.

The Assembly of European Regions (AER), aware of the changes being wrought in Europe, as well as defending the need to promote European union, has emphasised the fact that it should be based on a federal model with a well-balanced structure which takes into consideration the three levels: federal union, member states and nations and regions. It recommends a division of powers and responsibilities clearly laid-out according to the principle of subsidiarity, and the right of the regions to initiative and cooperation in the European decision-making process to the extent that their rights and interests are affected, regional electoral constituencies and the defence and guarantee of the language and cultural rights of the regions.

Faced with the question of whether or not it is desirable to institutionalize the regional level in the design of the new Community building, there are reasons to argue in favour of the convenience of promoting the participation of the regions in the creation of European union.

A) Political reasons: the very existence of the regional dynamic in western Europe is evidence of the crisis and insufficiency of the state as a model of political organization. The force of the regional phenomenon arises from societies' and individuals' need for their own identity. In addition, the changes brought about in Central and Eastern Europe will strengthen political decentralization even further, because they are mainly loosely joined, plurinational entities which have recognised, in the state, an instrument which centralizes and monopolises all social initiatives.

B) Economic reasons: the creation of the Internal European Market could increase the regional North-south, East-West differences and disparities. In this way, the regional level becomes a geographical and institutional area which is more suited to drawing up and applying a regional policy which promotes both growth and economic and social cohesion. For this reason, the strengthening of Community powers and responsibilities should be accompanied by the participation of regional authorities in the adoption of decisions which affect them. In this way, better information and increased participation of the citizens involved in Community policies would be ensured, as would the respect for the powers and responsibilities granted to the regions by their respective Statutes of Autonomy.

- C) Reasons of effectiveness: regional participation in the process of drawing up Community regulations which affect their powers and responsibilities is the best guarantee for the correct application of Community law in the regions.
- D) Social and cultural reasons: Vital for the existence of European cultural citizenry and identity is the respect for diversity of cultures and languages present within Europe, where various examples of plurinational states can be found.

Regions and the principle of subsidiarity

Nonetheless, greater regional participation does not mean that the states would lose their place. It is simply a question of considering a new conception of the state in a structure which also takes into account the regional level.

It is no wonder, then, that the AER should stress that the setting up of a European union which respects the diversity of its peoples and citizens has to include the application of the principle of subsidiarity which, in turn, in certain cases, takes into account the regional level, the level which is closest to the citizens.

We are dealing with a complex matter which has a high level of political content and therefore depends essentially on the political determination of the member states to open the way up to the greater involvement and acceptance of the peoples and citizens of Europe.

The Treaty of Maastricht is the key to opening the way to

participation, which is essential for decisions to be adopted as near to the citizens as possible; and the application of the principle of subsidiarity is particularly essential if the Community wishes to evolve with the whole-hearted backing of its citizens.

Gasòliba defensa a Londres el principi de subsidiarietat de les regions

LONDRES — L'eurodiputat català Carles Gasòliba va pronunciar ahir una conferència sobre la subsidiarietat de les regions, per tal de donar a conèixer l'experiència de Catalunya en el tema regional. Gasòliba, convidat pel Federal Trust londinenc, va reafirmar el creixent paper polític que tenen les regions en l'Europa comunitària. (Redacció)



Dr Otto Schmuck: 'The federal idea was to weaken Germany, but ...'



Anne-Marie Neyts-Uyttebroeck: Belgium was a product of London



Carles Gasoliba: he believes Catalonia is a 'country within a country'

Spelling out the S-word

JOHN MAJOR will spend a great deal of time at the Edinburgh Summit arguing for subsidiarity within the European Community. Some of the heads of state present may be tempted to ask him why he doesn't practise what he preaches on his own patch. Subsidiarity in Britain was the subject of a debate organised by the Federal Trust in London yesterday, and they came from Flanders, Catalonia and Rheinland Palatinate to explain how it works in practice.

The Scots present in the audience could perhaps understand more

Yesterday's debate on subsidiarity raised the question of what the Government means by it at home, reports HARRY CONROY

than others some of the irony in the presentations — when, for example, Dr Otto Schmuck, from the German Lander of Rheinland Palatinate, said: "It was the British who insisted after the Second World War that a federal system of government should be introduced in Germany. The idea was to weaken Germany, but instead it has worked very well."

Or when Catalanian MEP Carles

Gasoliba, challenged about Catalonia being described as a "country within a country", replied: "Catalonia is a nation. It is only the Spanish government which has a terminological problem."

Or when Flemish Liberal MP Anne-Marie Neyts-Uyttebroeck explained that modern Belgium, which is slowly becoming a federal state, was set up at a "London conference".

Perhaps the final irony came when the United Kingdom's presentation on the subject of "Europe of the Regions" was presented by an English councillor — John Chatfield.

The conference, however, provided an insight on how subsidiarity is operating in large parts of Europe and how they view the subsidiarity question within the European Community — not as a means of stopping at their national parliament or assembly but as something which percolates down to the lowest effective level of government.

They do not see subsidiarity as rolling back Europe, but rather as allowing their regions to participate fully in the Community.

Carles Gasoliba explained how the six million Catalonians had prospered since 1980 when they were granted a large degree of autonomy. Senor Gasoliba, a former banker, explained: "Catalonia controls its own education, environment, health and industrial promotions policies. There is a high flow of foreign investment into Catalonia from Sweden, Switzerland and Japan. British firms had been established before we gained our autonomy but they have not left."

He added: "There are some politicians who demand total independence from Spain but they are not a significant power. We want a strong Catalonia within Spain and Europe."

"The British Government seems to want devolution from Europe for itself but we believe in the principle that the regions of Europe must be included in any devolution of power."

The German Lander representative, Dr Schmuck, described how the 16 federal governments which make up Germany play an important role not only within Germany but also in Europe.

He is employed in his Lander's European Affairs Department which all the German Landers are creating.

Advocating the benefits of a devolved system, which even the present Government might agree with, Dr Schmuck said: "The Landers have created competition. They compete with each other to attract industry and commerce, which means that we don't have just one large industrial and commercial centre but several spread throughout the regions."

The wide divergence between the European approach to subsidiarity and the United Kingdom's was highlighted by the discussion on the proposed Committee of the Regions.

According to Councillor Chatfield, who is president of the

Consultative Council of Regional and Local Authorities with the EC Commission, the debate in the UK centres on whether or not we will appoint elected local authority representatives or whether some of our 24 representatives will be civil servants.

In democratic terms this would appear to lag far behind the Germans whose 21 representatives are likely to be made up of ministers from the Lander governments and a sprinkling of local authority members.

Councillor Chatfield made it clear that if the British Government pursued the line of appointing non-elected representatives to the Committee of the Regions, that it would be "unacceptable".

He explained that the British representatives from the local authorities on the existing EC consultative body were united in their view that only elected representatives should be appointed.

"This is a cross-party issue," he said. "At present there are six of us from the UK on the existing committee, three from England and one each from Scotland, Northern Ireland and Wales."

"We have told the Government that the qualification to be a member of the Committee of the Regions must be that you are elected. It is not for civil servants to make decisions on policy."

Councillor Chatfield added: "If unelected representatives were appointed, it would not address the democratic deficiency which is why this committee was created."

THE continental representatives attending the conference were appalled at the level of the British debate. Carles Gasoliba said: "In Catalonia we don't believe the Committee of the Regions should be for local authority representatives. This is an other lower level of government from the regions."

Conference chair Gary Miller, director of the Federal Trust, has to explain that in the United Kingdom local authorities had to try to make up for the absence of devolved government.

The British dilemma was summed up by Andrew Duff, of the Federal Trust, in his briefing paper to the conference in which he wrote: "The British position is vulnerable because the Prime Minister set so much store at the Maastricht European Council one year ago in forcing out of the Treaty text reference to the term 'federal'. Instead, in Article A we have, much as in the Treaty of Rome, 'an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen'."

It all depends on how long a piece of string you want "closely" to be